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THE LAW OF TAXATION

IN

PENNSYLVANIA

BY

arst.2!!
FRANK M. EASTMAN

of the Dauphin County Bar

**Author of "Private Corporations in Pennsylvania ;" "Taxation of
Public Service Corporations in Pennsylvania," etc.**

TO WHICH IS ADDED

***The Act of Congress Approved August 5, 1909, Imposing
An Income Tax on the Net Earnings
of Corporations***

VOLUME II

NEWARK, N. J.
SONEY & SAGE

1909

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THE LAW OF TAXATION IN PENNSYLVANIA.

PART II.

TAXATION FOR STATE PURPOSES.

CHAPTER XXXII.

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§ 720. **History of state taxation.** Prior to 1831 Pennsylvania could hardly be said to have any system of state taxation. For many years the expenses of state government were so small as to permit of being almost wholly defrayed by the revenue de-

rived from sales of lands, from the dividends paid on stocks of corporations in which the state had invested, and from similar sources. The Commonwealth's quota of Revolutionary War debt was apportioned among the counties. In 1814 a tax was laid on bank dividends, and, prior to 1826, this tax, with certain taxes on court officers, etc., constituted the entire state taxation, save in the way of licenses. In 1826 the tax on collateral inheritances was imposed, which is still in existence.

In 1831 the first act creating anything like a system of state taxation was passed. It taxed ground-rents, moneys at interest, moneys owing by solvent debtors, mortgages, and corporation stocks on which dividends were paid, public stocks, except those issued by the state, and pleasure carriages, one mill on the dollar of the value thereof annually. This tax was collected by the county officers for the use of the Commonwealth. In the same year the commissioners of the several counties were required to increase the county rates by one mill upon the dollar of the value of all real and personal property subject by law to local taxation, and to pay the additional amount, raised in this manner, for the use of the state. Both the act providing for this taxation, and the other act of 1831, above referred to, were limited in their operation to five years, it being generally believed that, at the expiration of that time, the income from the gigantic public works, consisting of canals, railroads, etc., which were then in course of construction, would be sufficient to defray all expenses of state government. Both acts of 1831 were repealed by the Acts of February 18, 1836, and March 10, 1836. From 1836 to 1840 the Commonwealth realized certain large sums from the United States Bank, incorporated as a state bank, after the expiration by limitation of its charter from the general government, and from the United States, the surplus then existing in the United States Treasury being divided among the several states. At the beginning of 1840 the taxes on bank dividends, collateral inheritances, writs, etc., and licenses, were the principal sources of state revenue.

The debt created for the erection of the public works had by this time assumed such proportions, and the interest charge thereon was so onerous, that it soon became apparent that the Commonwealth could not look to the income derived from such works as a means of defraying the expenses of government, and the sale of

the works began to be agitated. At this juncture was passed the Act of June 11, 1840, which imposed a tax of one mill on the stock of banks and other institutions making or declaring a profit; half a mill on certain personal property, a small tax on household furniture, pleasure carriages, and watches, and a tax on the salaries of the officers of the state. It was estimated that these taxes would produce five or six hundred thousand dollars per annum. As the interest charge on the public debt alone was \$1,600,000 for that year, however, this act proved ridiculously insufficient for the purposes which it was intended to attain, and, in 1843, the Commonwealth defaulted in the payment of interest to its creditors.

Large amounts of the Pennsylvania Bonds were held in England and the default in the payment of interest thereon created intense indignation on the part of these creditors. Sidney Smith was one of the English bondholders and he addressed a petition to Congress urging the redemption of the bonds. One of his best witticisms was occasioned by this default. On some one inquiring about his health at this time, he replied: "I will reply in the words of Paul to King Agrippa, 'I would to God that thou wert as I am, *except these bonds.*'"

The storm of criticism which followed this violation of faith resulted in awakening all citizens to the demands of the hour, and on April 29, 1844, an act was passed, very sweeping in its provisions, which forms the basis of the tax system now in existence.

The Act of April 29, 1844, created the existing taxes on capital stock and on personal property. The state tax on real estate, therein provided for, was repealed by Act of February 23, 1866, P. L. 83, and the tax on horses and cattle, for state purposes, by Act of March 21, 1873, P. L. 46. The tax on watches, household furniture, and pleasure carriages was repealed by Act of May 13, 1887, P. L. 114. The said Act of 1844 also originated the practice, universally observed since, in subsequent legislation, of taxing corporations directly through state officers, and personal property through the medium of county officers, acting, for that purpose, as agents of the state.

From the inauguration of the new system of taxation by the Acts of 1844 and 1846, down to the beginning of the civil war, no material changes were effected in that system. The taxes on personal property, capital stock of corporations, bank stock and

dividends, writs, deeds, etc., fees of public officers, and collateral inheritances, and the various kinds of licenses, constituted, during that time, the main sources of revenue.

The breaking out of the Rebellion necessitated greatly increased expenditures, and, to meet these, new taxes were imposed. Among these were the tax on the net earnings or income of private bankers and brokers (1861); the tax on the gross receipts of transportation companies (1866); tax on the net earnings or income of corporations (1864); tax on tonnage of transportation companies (1864); tax on the mining of coal (1867); and the tax on corporate loans, which was not, however, as originally created, a new tax, but merely a new way of taxing certain classes of personal property (1864).

After the close of the war many of these new taxes were abolished, among these the tax on corporate loans, the tax on gross receipts of transportation companies, and the tax on the mining of coal, by the Acts of March 21, 1873, and April 24, 1874, while, by subsequent legislation, the tax on the net earnings of corporations was gradually narrowed in its application until it was limited as at present, and the tax on tonnage, materially modified, was gradually diminished until its collection ceased, under the provisions of the Act of June 7, 1879, in 1881, by limitation.

With the development of the state, increased revenues again became necessary, and in 1877 the tax on gross receipts of transportation companies was revived, and, by the same act, a new tax, that upon the gross premiums of domestic insurance companies, was created.

It was also attempted, by the Revenue Acts of 1879 and 1881, to revive the tax on corporate loans, but, owing to the wording of the sections of said acts providing for the imposition of this tax, the Supreme Court declared the tax invalid, and it was not until the passage of the Revenue Act of June 30, 1885, that the tax on corporate loans as it now exists was created.

The said Act of 1885, by its twentieth section, also provided for the exemption of manufacturing companies from the tax on capital stock. The Act of 1879 had contained a proviso that limited partnership associations engaged in manufacturing or in mercantile business should be relieved from the tax on capital stock, but the Act of 1885 was the first to contain a general provision of that nature. That exemption has been continued by all

subsequent legislation, modified, however, so as to relieve only so much of the capital of manufacturing companies from taxation as is invested in property used exclusively in manufacturing.

From 1885 to 1897 no new tax was created, all tax legislation, during that period, being in the nature of amendments to the laws relating to already existing taxes.

At the session of 1897 were passed the Act of May 12, 1897, P. L. 56, imposing a tax on direct inheritances, subsequently held to be unconstitutional,¹ and the Act of July 15, 1897, P. L. 292, under the provisions of which banks are taxed at the present time. Section 3 of the said act, which imposed a special excise tax on express companies, was repealed by the Act of April 28, 1899, P. L. 72. At the same session was passed the Act of June 15, 1897, P. L. 166, imposing a tax on the employers of foreign-born, unnaturalized male persons over twenty-one years of age, which act was subsequently declared to be unconstitutional.^{1a} The Act of June 22, 1897, P. L. 178, taxing the matured stock of building and loan associations for state purposes was also passed at this session, and is still in force.

At the session of 1899 was passed the Act of May 2, 1899, P. L. 184, imposing a mercantile license tax, which superseded all previous laws on this subject, and which act, as variously amended, is still in force.

At the session of 1901, by the Act of June 13, 1901, P. L. 559, the laws relating to the taxation of brokers and private bankers were amended so as to make such bankers and brokers taxable upon their gross receipts at the rate of one per centum.

At the session of 1907 were passed the following acts relative to state taxation:

The Act of May 7, 1907, imposing a license tax on brokers of all kinds, including commission merchants and pawn brokers, and repealing all prior acts relative to this subject; the Act of June 7, 1907, P. L. 430, amending § 21 of the Act of June 8, 1893, so as to provide that corporations paying a capital stock tax shall be

¹Cope's Estate, 191 Pa. 1 (1899); 44 W. N. C. 89; Eshleman's Estate, 191 Pa. 68 (1899); Portuonda's Estate, 191 Pa. 28 (1899); 44 W. N. C. 95.

^{1a}Juniata Limestone Co. v. Fagley, 187 Pa. 193 (1898); Fraser v. McConway & Torley Co., 6 D. R. 555 (1897); Ade v. County Commissioners, 20 Pa. C. C. 672 (1898).

exempt from the payment of further tax by them only on the mortgages, bonds and other securities owned by them in which the whole body of stockbrokers or members as such have the entire equitable interest in remainder; and the Act of April 25, 1907, P. L. 117, relative to the payment of an annual mercantile license tax by restaurants, eating houses and cafes; and the Act of May 25, 1907, P. L. 244, imposing a license tax on billiard and pool rooms, shooting galleries, bowling alleys, etc., and repealing all prior acts requiring the payment of a state license fee thereby.

The foregoing is, of course, not a complete enumeration of the various acts relative to state taxation. For a complete statement of such acts, the reader is referred to the chapters treating of the various taxes, respectively.

§ 721. Attempts to amend state tax laws. Various recent attempts have been made to amend the present Pennsylvania system of state taxation. At the session of 1887 a revenue bill was passed by both houses of the General Assembly which would have materially changed the system of state taxation but which failed to become a law owing to the failure of the president pro tempore of the Senate to affix his signature thereto.

A tax commission was created at the said session, which, after the adjournment of the General Assembly and the failure of the measure above referred to, reported a revenue bill, the principal novel feature of which was the substitution of a single tax on corporations for the three taxes on capital stock, gross receipts and bonded indebtedness thereon. The General Assembly took no action on the bill so reported, and at the session of 1889 another tax commission was created, the members of which failed to agree upon any measure, and made individual reports suggesting various changes in the method of taxation, none of which was adopted.

At the session of 1895 a revenue bill was introduced which provided for the taxation of the capital stock of corporations on the basis of the aggregate market value of their shares of stock and outstanding bonds, with certain deductions. In order to ascertain whether such a measure would produce sufficient revenue, the auditor general was directed at the said session to secure reports from corporations of the state and to make feigned settlements thereon on the basis provided by the proposed act. It was thus ascertained that a sufficient amount of revenue would not be obtained under the provisions of the said bill. The defect of the

measure, however, seemed to be in the character of the deductions allowed and not in the method of arriving at the value of the capital stock.

The measure above referred to was drawn by an unofficial body, known as the Pennsylvania Tax Conference, formed by the representatives of various important interests within the state, with the objects of procuring statistics upon which discussions of proposed changes of taxation might be based. It made two preliminary reports, one containing much valuable information relative to objects of taxation in Pennsylvania, and the other giving a comparative statement of the tax systems of other states.

This body ceased its activity after reporting the bill above referred to.

Since 1895 there has been no serious attempt to revise the tax system of the state, although bills for the imposition of new taxes or the modification of old have been introduced at the various sessions from time to time.

§ 722. Subjects of state taxation are distinct from subjects of local taxation. As heretofore pointed out,^{1b} the subjects of state taxation in Pennsylvania are entirely separate and distinct from the subjects of local taxation, except that vehicles used for the transportation of passengers for hire are taxable both for state and municipal purposes, and some subjects are liable to both state and municipal license taxes. Directly and indirectly, however, certain subjects are taxed both for state and local purposes. Thus, the property of corporations, with exceptions as elsewhere noted, is directly taxable for local purposes, while, through the state taxation of the capital stock of said corporations invested in such property, it is also indirectly taxed for state purposes.

§ 723. State tax rates. All state taxes are levied at specific rates, prescribed by statute.

§ 724. Assessment of state taxes. Assessments of state taxes on corporations are made by the officers of such corporations and revised by the accounting officers. The assessment of capital stock is called an appraisalment. Other assessments of corporations amount to no more than a return of certain prescribed data on the basis of which tax is required by law to be imposed.

^{1b}See § 13.

Personal property is assessed for the state tax thereon by the assessors of county and township taxes, and the assessments thereof are revised in the same manner as the assessments for said taxes.

Property is assessed for the payment of collateral inheritance tax by appraisers appointed for that purpose, and the business of merchants is assessed for the payment of the mercantile license tax by mercantile appraisers appointed in each county.

§ 725. Classification of state taxes. The sources of revenue of the Commonwealth of Pennsylvania may be conveniently divided for discussion into two classes, according to the methods by which the revenue from such sources are collected, viz:

I. Taxes and charges paid directly, or through other state officers, to the state treasurer, and

II. Taxes and charges collected by county officers and by them paid to the state treasurer.

§ 726. Taxes and charges paid directly to the state treasurer. These are as follows:

1. Bonus on charters.
2. Tax on the capital stock of corporations and on interests in limited partnership and joint stock associations.
3. Tax on corporate loans.
4. Tax on county, municipal and district loans.
5. Tax on the gross receipts of transportation, transmission and electric light companies.
6. Tax on bank stock.
7. Tax on premiums of insurance companies.
8. Tax on the net earnings of corporations without capital stock.
9. Tax on stock of trust companies.
10. Tax on matured stock of building and loan associations.
11. Tax on gross receipts of private bankers.
12. Miscellaneous taxes paid directly, or through other state officers, to the state treasurer.

These taxes will be severally treated of in their order in the following chapters, after which the revenues collected by county officers will be considered.

§ 727. Registration in the auditor general's department of corporations and limited partnership and joint stock associations. Hereafter no limited partnership, bank, joint

stock association, association, corporation, or company whatsoever, formed, erected, incorporated, or organized by or under any law of this Commonwealth, general or special, or formed, erected, incorporated or organized under the laws of any other state, and doing business in this Commonwealth, shall go into operation without first having the name of the institution or company, the date of incorporation or organization, the act of assembly or authority under which formed, incorporated or organized, the place of business, the post office address, the names of the president, chairman, secretary and treasurer or cashier, and the amount of capital authorized by its charter, and the amount of capital paid into the treasury, registered in the office of the auditor general; and every limited partnership, bank, association, joint stock association, company or corporation whatsoever, now engaged in business in this Commonwealth, shall within ninety days after the passage of this act, register as herein required in the office of the auditor general; all the corporations, companies, associations, and limited partnerships aforesaid shall annually hereafter notify the auditor general of any change in their officers; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected on an account settled by the auditor general and state treasurer in the same manner as taxes on capital stock are settled and collected.²

The language of this act is broad enough to cover corporations of the first class, not for profit, but such corporations are not in fact required to register under the provisions of the act.

§ 728. Certification to auditor general of data relative to limited partnership and joint stock associations. From and after the passage of this act it shall be the duty of the recorders of deeds of the several counties of this Commonwealth, upon the filing in their respective offices of the articles of association of any limited partnership association or joint stock association, to certify to the auditor general, upon a blank form which shall be prepared and furnished them by the auditor general, the following information relative to said limited partnership

²Sec. 19, Act of June 1, 1889, May 1, 1868, P. L. 108; § 1, Act P. L. 420. See § 1, Act of April of April 24, 1874, P. L. 68; § 1, 21, 1858, P. L. 419; § 1, Act of Act of June 7, 1879, P. L. 112.

association or joint stock association filing its articles of association as aforesaid:

1. Name of association.
2. Purpose for which organized.
3. Term for which organized.
4. Location of principal office.
5. Date of organization.
6. Authorized amount of capital stock.
7. Name and postoffice address of chairman.
8. Name and postoffice address of secretary.
9. Name and postoffice address of treasurer.

For their services in furnishing the auditor general with the said information, the said recorders of deeds shall be paid at the rate of twenty-five cents for each limited partnership or joint stock association, the information concerning which they shall have certified to the auditor general in the manner above provided for. The said fee of twenty-five cents shall be paid to the said recorders of deeds by the limited partnership associations or joint stock associations at the time of filing the articles of association thereof, to be in addition to the fees now prescribed by existing laws for the filing and recording of the same.³

§ 729. Notification to auditor general of proposed judicial sales of corporate property. Hereafter when any writ of execution is placed in the hands of any sheriff in this Commonwealth, for the purpose of selling the property or franchises of any corporation, limited partnership, or joint stock association, it shall be the duty of such sheriff forthwith to notify the auditor general, furnishing him information as follows:

First. Name of the corporation, limited partnerships or joint stock association, defendant.

Second. Name of the plaintiff in the writ of execution.

Third. Nature of the property levied upon and to be sold, and location of same.

Fourth. The time when the property or franchise will be sold and the return day of the writ upon which sale will be made.⁴

³Act of June 24, 1895, P. L. 230. This act does not relieve limited partnership and joint stock associations from registering in the office of the auditor general un-

der the 19th section of the Act of June 1, 1889, P. L. 420.

⁴Sec. 1, Act of May 29, 1901, P. L. 344.

For the services herein directed to be performed, the sheriff is hereby authorized to tax, and collect as cost in the writ of execution against said corporation, limited partnerships or joint stock associations, the sum of two (\$2.00) dollars: Provided however, that when more than one writ is made returnable to any one return day, the costs hereinbefore allowed shall only be taxed upon one writ of execution.⁵

§ 730. Notification to auditor general of proposed sales of corporate property by trustees, receivers, etc. Hereafter, for the purpose of aiding the auditor general in the collection of taxes due the Commonwealth from corporations, limited partnerships and joint stock associations, it shall be the duty of any trustee, assignee, receiver, master, or other officer, however named or appointed, to notify the auditor general, when such officer is preparing to sell the property, real or personal, of any corporation, limited partnership, or joint stock association; such notice to contain the following information:

First: Name of the corporation, limited partnership or joint stock association, party defendant.

Second: Name of the plaintiff, or party on whose account the sale is made.

Third: Nature of the property to be sold, and location of the same.

Fourth: Time and place of sale.⁶

The information noted in section one of this act must be filed with the auditor general at least ten days prior to advertising for sale the property of any corporation, limited partnership or joint stock association.⁷

§ 731. Distribution of proceeds of sales not to be approved unless such notification is given. No distribution of the proceeds arising from the sale of property of a corporation, limited partnership or joint stock association, by a trustee, assignee, receiver, master, or other official, shall be approved or authorized by the court having jurisdiction unless there be filed therein a certificate from the auditor general, under his hand and the seal of the department, showing that notice of such sale was filed with him in accordance with the provisions of this act.⁸

⁵Sec. 2, Act of May 29, 1901, P. L. 344.

⁶Sec. 1, Act of May 25, 1907, P. L. 250.

⁷Sec. 2, Act of May 25, 1907, P. L. 250.

⁸Sec. 3, Act of May 25, 1907, P. L. 250.

§ 732. Penalty for failure of corporations to make any reports to auditor general required by law. In case of any corporation, joint stock association, limited partnership, or companies whatsoever, formed, erected, incorporated or organized by or under any law of this Commonwealth, general or special; or formed, erected, incorporated or organized under the laws of any other state or country, doing business in this Commonwealth, of any kind whatsoever; or having filed a statement of location of office in the office of the Secretary of the Commonwealth; or having registered in the auditor general's department, except such corporations, joint stock associations, limited partnerships, or other companies as are now by the several acts of Assembly of this Commonwealth specifically exempted from making reports to the auditor general's department, shall neglect or refuse to make reports to the auditor general, as required by the several provisions of law, for any three tax years, such corporation, joint stock association, limited partnership or other company shall be liable to a penalty of five hundred dollars (\$500), which shall be settled against such corporation, joint stock association, limited partnership or other company by the auditor general and state treasurer, in the same manner as state taxes are now settled against corporations, joint stock associations, limited partnerships or other companies: Provided, that this act shall not be construed to relieve such corporations, joint stock associations, limited partnerships or other companies from the liability to any penalty or penalties now in force by provision of law.⁹

§ 732a. Amount of penalty to be a lien. The penalty imposed by this act shall be a lien upon the franchises and property, both real and personal, of such corporations, joint stock associations, limited partnerships or other companies, from the date of settlement by the auditor general and state treasurer.¹⁰

The fact that it does not appear that reports were called for by the accounting officer, does not relieve a corporation from the penalty for failure to make reports. The duty of reporting is placed on the officers of corporations.¹¹

§ 733. Tax reports made to the auditor general as evidence. The appraisement of the capital stock of a corporation in

⁹Sec. 1, Act of April 14, 1905, P. L. 166.

¹⁰Sec. 2, Act of April 14, 1905, P. L. 166.

¹¹Com. v. Stony Creek Woolen Mfg. Co., 3 Dau. Co. Rep. 1 (1880).

the report of its officers to the auditor general will be received as evidence in condemnation proceedings against a bridge company.¹²

Tax reports made to the auditor general are competent evidence.¹³

Copies of tax reports, or information therefrom, are not furnished by the auditor general save to officers of the companies making such reports, respectively, so that, if such copies are desired by parties adverse in interest to the corporations making the original reports, the auditor general should be subpoenaed to produce the originals or certified copies thereof. Such certified copies are admissible in evidence under the provisions of § 1 of the Act of March 31, 1823, 8 Sm. Laws. 144.

¹²West Chester & Wil. Pl. Rd. Co. v. Chester County, 182 Pa. 40 (1897).
¹³Citizens' Pass. Ry. Co. v. Phila., 49 Pa. 251 (1865).

CHAPTER XXXIII.

SETTLEMENT OF STATE TAXES.

- § 734. Auditor general to adjust and settle all public accounts.
- 735. Power to compel attendance of witnesses and production of books and accounts.
- 736. Issue of summons by auditor general.
- 737. Issue of writs of attachment.
- 738. Penalty for failure to execute writs.
- 739. Auditor general may commit persons failing to testify or produce accounts.
- 740. Examination of books and papers of corporations.
- 741. State treasurer to approve settlements for taxes and have powers similar to those of auditor general.
- 742. When auditor general and state treasurer disagree governor to decide.
- 743. Copies of settlements to be mailed taxables.
- 744. Appeals from settlements of state taxes.
- 745. Interest on overdue state taxes.
- 746. Accounting officers may make estimated settlements.
- 747. Auditor general and state treasurer may revise settlements within one year from date thereof.
- 748. Resettlement of accounts of public officers by auditor general.
- 749. Revision of settlements by auditor general, state treasurer and attorney general—Board of public accounts.
- 750. Assignment of credits allowed by board of public accounts.
- 751. Compromise of taxes—Payment by installments.
- 752. Compromise of taxes due by insolvent corporations.
- 753. Receipts for state taxes.
- 754. Fiscal year.
- 755. Lien of state taxes.
- 756. Proceedings for the collection of state taxes.
- 756a. Scire facias on liens for state taxes.
- 757. Commissions for the collection of state taxes.
- 757a. Employment of counsel by auditor general or attorney general.
- 758. State claims against estates of decedents.
- 758a. County and city officers to make monthly returns and payments of state taxes.
- 758b. Penalty.
- 758c. Accounting officers may examine accounts of county and city officers refusing to make returns or payments, and settle accounts against them.
- 758d. Collection of overdue accounts—Interest.

758e. Repealing clause.

728f. Prosecution of certain defaulting officers in the court of common pleas of Duphlin county.

758g. Judgments against defaulting officers to be liens in all counties.

§ 734. Auditor general to adjust and settle¹ all public accounts. All accounts between the Commonwealth and any person or persons, body politic or corporate, as well those with the officers of the revenue as other persons entrusted with the receipt, or who have or hereafter may become possessed of public money, also the accounts of all persons having claims on the Commonwealth, except as are hereinafter excepted, shall be examined and adjusted by the auditor general, according to law and equity.²

"It is obvious the object of the lawmakers was to bring within the adjusting authority of the public agents the settlement prima facie of all pecuniary claims made by the government against persons natural or artificial, springing from any source whatever, as well as all demands made by such persons against the state. . . . As the statute is remedial and in practice found to be very beneficial, the courts have been liberal in its construction. Its operation has not been confined . . . to technical accounts; but it has been extended to embrace every case where one retains public money which ought to be paid into the public coffers, no matter under what appellation received. Whether called tax, or dividends, or portions of fees of office, the sums received for and retained from the public use fall within the purview of the act."³

The settlement of state taxes by the auditor general is a ministerial act, and may be done by a person deputized for that purpose.⁴

The receipt by the state treasurer of an amount less than that due by a taxable, does not preclude a subsequent settlement of an account by the accounting officers for any excess legally due.⁵

¹An account is "settled" when a statement thereof is officially made and signed by the accounting officers. "Settlement," in this sense, does not mean "payment," as is sometimes supposed.

²Sec. 1, Act of March 30, 1811, 5 Sm. L. 228.

³Easton Bank v. Com., 10 Pa. 442 (1849); Com. v. Lehigh Valley R. R. Co., 3 Luz. L. Obs. 447

(1863); Wm. Wilson & Sons Silversmith Company's Est., 150 Pa. 285 (1892); Fitler v. Com., 31 Pa. 406 (1858).

⁴Hamilton Steele Wheel Co. v. Com., 12 W. N. C. 328 (1882); Phila. & Reading R. R. Co. v. Com., 13 W. N. C. 478 (1883); 104 Pa. 86.

⁵Easton Bank v. Com., 10 Pa. 442 (1849).

Although advisable, it is not imperative upon the auditor general, previous to the settlement of an account of a public officer, to give notice of the time and place of such settlement,⁶ and in the absence of evidence, official notice will be presumed,⁷ and the bringing of a suit is sufficient notice to impel a party upon whom a writ has been served to ascertain, if not already informed, what has been settled against him and to appeal if he thinks himself injured.⁸

"An 'account' or 'settlement' is a physical, tangible thing, a paper with figures and writing upon it, signed by the auditor general and state treasurer, indorsed, copied into a ledger and filed away in its appropriate place. Whether such a settlement has been made against a given corporation, for a tax of a given year, is therefore a question of fact, to be ascertained by looking in the proper place for the settlement."⁹

The Commonwealth is not concluded by the failure of its accounting officers to make settlements for taxes due,¹⁰ nor by settlements made for insufficient amounts,¹¹ but the action of such officers may relieve from the payment of interest and penalties which would otherwise be due.¹²

It is customary for the accounting officers to make separate settlements for each tax for which a corporation is subject for each year, but it appears that accounts need not be settled separately and said accounts for each year be thus kept distinct.¹³

The Commonwealth does not lose its right to collect taxes accrued but not settled at the date of the dissolution of a corpora-

⁶Hays v. Commonwealth, 27 Pa. 272 (1856); Hultz v. Com., 3 Grant 61 (1856); Com. v. Fitler, 12 S. & R. 227; Speck v. Com., 3 W. & S. 324 (1842); Com. v. Runk, 26 Pa. 235 (1856).

⁷Phila. v. Com., 52 Pa. 451 (1866).

⁸Lehigh Crane Iron Co. v. Com., 55 Pa. 448 (1867).

⁹Com. v. N. Y., P. & O. R. R. Co., 188 Pa. 169 (1898), op. of ct. below.

¹⁰Com. v. Wolbert, 6 Binn. 292 (1814). See Com. v. Penna. Co., 145 Pa. 266 (1892).

¹¹Com. v. Easton Bank, 10 Pa. 442 (1845); Elder v. Com., 55 Pa. 485 (1867); Haehnlen v. Com., 13 Pa. 617 (1850); Young v. Com., 28 Pa. 501 (1857).

¹²Com. v. Phila. City and County, 157 Pa. 558 (1893); Com. v. Porter, 21 Pa. 385 (1853); Com. v. Phila. County, 157 Pa. 531 (1893); Del. Div. Canal Co. v. Com., 50 Pa. 399 (1865); Arnold's Estate, 46 Pa. 277 (1863). See §§ 745 and 781.

¹³Porter v. Com., 1 P. & W. 252 (1830).

tion, and a settlement therefor made against the corporation binds its assets in the hands of its receiver.¹⁴

§ 735. Power to compel attendance of witnesses and production of books and accounts. To enable the auditor general to examine and adjust the public accounts, he is hereby invested with power to compel all persons in the receipt or possession of public moneys to render to him their accounts, and to enforce the attendance (in the manner hereinafter pointed out) at his office, of such persons, whether party or witnesses, whom he may deem necessary to examine in the investigation of any public account, and to administer all necessary oaths or affirmations; and the auditor general is hereby also invested with power to compel the exhibition or delivery to him (as the case may be) by any person possessing the same, in the manner hereinafter pointed out, of all official or public books, accounts, documents or papers, which have any relation to or connection with any public account, and which he may deem necessary in the investigation and adjustment of the same: Provided however, that if by reason of the distance of residence from the seat of government, or from any sufficient cause, satisfactory to the auditor general and state treasurer, it be found impracticable or difficult to procure the attendance of such person at the office of the auditor general, for the purpose of giving information respecting any public account, it is hereby made the duty of the auditor general to procure the testimony of all such persons to be taken before any judge of a court of common pleas, or justice of the peace, on a commission with interrogatories annexed, issued under the hand and seal of office of the said auditor general.¹⁵

§ 736. Issue of summons by auditor general. In order to procure the exhibition or delivery to him of all public accounts, books, documents or other papers, the auditor general is hereby authorized and required, in case of neglect or refusal to exhibit or deliver them, to issue his summons, directed to the sheriff or coroner of the county in which the person or persons reside, who neglect or refuse to exhibit or deliver public accounts, books, documents or papers to the auditor general, commanding such sheriff or coroner to execute such writ and procure the exhibition or delivery, as the case may be, of the same at his office, and if the

¹⁴Com. v. American Life Ins. Co., 14 Pa. C. C. 216 (1893).

¹⁵Sec. 2, Act of March 30, 1811, 5 Sm. L. 228.

person or persons summoned by the auditor general neglect or refuse to appear with or transmit the accounts, books, documents or other papers within sixty days after the day mentioned in the summons of the auditor general, he, the said auditor general, may issue his writ of attachment commanding the said sheriff or coroner to commit the person or persons so neglecting or refusing to the common gaol of the county, there to remain until he or they comply with this act, or shall be discharged by due course of law.¹⁶

§ 737. Issue of writs of attachment. In order to procure the attendance of such persons as the auditor general may deem necessary in relation to any public account already furnished or to be furnished, he, the said auditor general, shall issue his writ, directed to and commanding the sheriff or coroner of the county wherein such person or persons reside, whom he may summon, to cause the attendance at the office of the auditor general of such person or persons, and if after thirty days from the time the said person or persons ought to have appeared in the office of the auditor general agreeably to the said summons, such person or persons neglect or refuse to appear, he, the said auditor general, may issue his writ of attachment commanding the sheriff or coroner to commit such person or persons so neglecting or refusing to appear, to the common gaol of the county, there to remain until he or they shall consent to comply with this act, or shall be discharged by due course of law.¹⁷

§ 738. Penalty for failure to execute writs. Any sheriff or coroner refusing or neglecting to execute the writs of the auditor general issued in pursuance of this act, shall forfeit and pay any sum not exceeding five hundred dollars; and if any gaoler refuses to receive and hold any person who may be ordered to gaol under the writs of the auditor general, issued in pursuance of this act, every such gaoler shall forfeit and pay to the Commonwealth the sum of three hundred dollars.¹⁸

§ 739. Auditor general may commit persons refusing to testify or produce accounts. If any person attending at the office of the auditor general on his summons shall refuse to ex-

¹⁶Sec. 32, Act of March 30, 1811,
5 Sm. L. 228.

¹⁷Sec. 31, Act of March 30, 1811,
5 Sm. L. 228.

¹⁸Sec. 33, Act of March 30, 1811,
5 Sm. L. 228.

hibit his account, or to answer such questions touching the same as may be put to him by the auditor general, unless such answer shall have a tendency to criminate such person, the auditor general shall have power to commit such person to the common gaol of the county wherein the seat of government shall then be, there to be holden until such person shall comply with this act, or be otherwise discharged by due course of law.¹⁹

§ 740. Examination of books and papers of corporations. The auditor general and state treasurer, or any agent appointed by them or either of them, are hereby authorized to examine the books and papers of any corporation, institution, company, association or limited partnership made taxable by this act, to verify the accuracy of any return made under the provisions of this or any other act of assembly.²⁰

The auditor general and state treasurer, or any agent appointed in writing by them, or either of them, are hereby authorized to examine the books and papers of any corporation, institution, company, or association, or limited partnership made taxable by this act, or any of its supplements, to verify the accuracy of any return made under the provisions of this or any other act of assembly.²¹

§ 741. State treasurer to approve settlements for taxes and have powers similar to those of auditor general. When any public account is examined and adjusted, entered in the books of the office and signed by the auditor general, it shall be submitted, together with the vouchers and all other papers and information appurtenant thereto, to the state treasurer, for his revision and approbation, and in order that the state treasurer may be enabled to revise and examine the accounts so submitted to him, he is hereby invested with powers similar to those vested in the auditor general by this act.²²

When there is no disagreement between the auditor general and state treasurer a reference to the governor, under the provisions of the following section, is not necessary.²³

The records of accounts in the state treasurer's office do not

¹⁹Sec. 4, Act of March 30, 1811,
5 Sm. L. 228.

²⁰Sec. 29, Act of June 1, 1889,
P. L. 420.

²¹Sec. 1, Act of April 28, 1899,

P. L. 72, amending § 12, Act of
June 7, 1879, P. L. 112.

²²Sec. 3, Act of March 30, 1811,
5 Sm. L. 228.

²³Phila. v. Com., 52 Pa. 451
(1866).

partake of a judicial character; but are mere books of accounts, and as such are open to correction as fully as the private account books of the citizen.²⁴

A clerk in such office who made an entry of credit for more money than was paid, is a competent witness to prove the error.²⁵

An entry on the books of the department of money received is not, as to the person paying, an admission of the receipt of such amount.²⁶

The state treasurer may examine and revise accounts by deputy.²⁷

§ 742. When auditor general and state treasurer disagree, governor to decide. The state treasurer shall return all accounts and vouchers and other papers appurtenant thereto, within a reasonable time, to the auditor general, signed by him, if he approve thereof, but if he disapprove of any account, he shall state in writing the reasons for such disapprobation, and if upon reconsideration of the account so disapproved of by the state treasurer, the auditor general and state treasurer cannot agree, it shall be the duty of the auditor general to lay the account and vouchers and other papers appurtenant thereto, before the governor, together with his own reasons and the reasons of the state treasurer respecting the same, and the decision of the governor thereon shall be conclusive as to the said officers, and the governor shall return the said account, vouchers and papers, with his decision in writing, to the auditor general, who, and the state treasurer, shall act thereon as in cases of their agreement, and accounts so settled shall be subject to appeal, and all other proceedings as in other settlements.²⁸

§ 743. Copies of settlements to be mailed taxables. Within thirty days after the settlement of an account agreeably to this act, on which a balance appears to be due to the Commonwealth, the auditor general shall send by mail or otherwise, to the person or persons indebted, a copy thereof under his hand and seal of office; and if the amount or balance of such account shall

²⁴Young v. Commonwealth, 28 Pa. 501 (1857).

²⁵Com. v. Aurand, 1 Rawle 282 (1829).

²⁶Young v. Commonwealth, 28 Pa. 501 (1857).

²⁷Sec. 5, Act of March 30, 1811, 5 Sm. L. 228.

²⁸Young v. Commonwealth, 28 Pa. 501 (1857).

not be paid into the state treasury within six months after the date of settlement, the auditor general shall have a second official copy of all such accounts made and put into the hands of the state treasurer.²⁹

Such copies of settlements for taxes are presumptive evidence that the accounts were settled,³⁰ and when un rebutted are sufficient evidence to enable the Commonwealth to recover the amount stated therein.³¹

It seems that, in the absence of any evidence, it is to be presumed that notice of the settlement of an account was given by the auditor general, it being his official duty to give it.³²

Service of a summons in a suit brought by the Commonwealth is equivalent to a notice, if no other has been given, and in such case the defendant may appeal within sixty days thereafter, proceedings on the suit to stay until the appeal is disposed of.³³

§ 744. Appeals from settlements for state taxes. If any person or persons, body politic or corporate, be dissatisfied with the settlement of his, her or their account, by the auditor general and state treasurer, he, she or they may appeal therefrom, to the court of common pleas of the county in which the seat of government may then be, and such appeal shall be transmitted by the auditor general to the clerk of the said court, to be by him entered of record, subject to like proceedings under the directions of the state treasurer as in common suits: Provided however, that the appeal be filed in the office of the auditor general within sixty days after notice of such settlement, and be accompanied with a specification of objections to the said settlement, and that the person or party appealing shall enter sufficient security before one of the judges of the court of common pleas, within ten days next after such appeal, to prosecute such appeal with effect, and to pay all costs and charges, which the court or arbitrators shall award, and also pay any sum of money which shall appear by the judgment of the said court, or award of arbitrators, to be due by him, her or them to the Commonwealth: Provided nevertheless, that where any proceedings shall be had

²⁹Sec. 9, Act of March 30, 1811,
5 Sm. L. 228.

³⁰Com. v. Farrely, 1 P. & W. 52.

³¹Phila. v. Com., 52 Pa. 451

³²Hays v. Com., 27 Pa. 272 (1856).

³³Hays v. Com., 27 Pa. 272 (1856).

against any person or persons who, upon summons and demand made, in pursuance of this act shall have refused or neglected to exhibit his, her or their account to the auditor general, as by this act is directed, such person or persons shall not be allowed any appeal from the settlement of the accountant officers, but the same shall be final.³⁴

In any appeal from a tax settlement of the fiscal officers of the Commonwealth, where the appeal and specifications of objections admit that a part of the said settlement is due and payable, if the part of the settlement so admitted to be due is paid to the state treasurer within twenty-one days after the filing of the appeal, the attorney's commission of five per centum shall not be collected upon the amount so paid.³⁵

The appeal and specifications are recorded in the office of the auditor general, and then filed by the employees of that office with the prothonotary of the court of common pleas of Dauphin county. The custom is to send the bond directly to said prothonotary. Said bond must be approved, as to the sufficiency of its sureties, by a judge of the court of common pleas of said county, but the practice is to have the bond approved by a judge of the court of common pleas of the county in which the sureties thereto are resident, and the Dauphin county judge accepts this approval. See Appendix, for forms of appeal and bond.

The bringing of a suit by the Commonwealth is sufficient notice of a settlement against a defendant, under the provisions of the Act of March 30, 1811.³⁶

A settlement for tax made by the accounting officers when unappealed from, is conclusive as to the amount of the settlement,³⁷ and this is so, although it is apparent on the face of the account not appealed from that an allowance authorized by law was not made in the settlement.³⁸ A settlement unappealed from is con-

³⁴Sec. 11, Act of March 30, 1811, 5 Sm. L. 228.

³⁵Sec. 2, Act of June 1, 1907, P. L. 383. See § 757.

³⁶*Lehigh Crane Iron Co. v. Com.*, 55 Pa. 448 (1867); *Hays v. Com.*, 27 Pa. 272 (1856); *Hultz et al. v. Com.*, 3 Grant 61 (1856).

³⁷*Hultz v. Com.*, 3 Grant 61 (1856); *Com. v. Farrelly*, 1 P. &

W. 52 (1829); *Com. v. Reitzel*, 9 W. & S. 109 (1845); *Spangler v. Com.*, 8 Watts 57 (1839); *Com. v. Pgh. & C. R. R. Co.*, 2 Pears. 389 (1872); *Com. v. Read. & Wilm. R. R. Co.*, 2 Pears 394 (1875).

³⁸*Hutchinson v. Com.*, 6 Pa. 124 (1847). It is doubtful if this rule would be followed at the present

clusive upon the sureties of public officers as well as upon such officers themselves,³⁹ but to make a surety responsible for moneys received by his principal in such case, it should appear that they were received while his suretyship was in force.⁴⁰

Where, however, the question involved in a suit on a settlement for taxes is not the amount of tax, but whether the accounting officers have jurisdiction of the subject matter and authority to assess the tax, it would seem that such question may be raised notwithstanding the fact that no appeal from the settlement was taken.⁴¹

On hearings on appeals to the court of common pleas of Dauphin county from settlements made by the accounting officers, the only objections which the court can legally consider are those specified in the appeal,⁴² and a specification of objection to the principal sums charged against an accountant does not include an objection to the interest charged from the exhibition of the account till its settlement by the accounting officers, and which is included in the balance decreed against the officer,⁴³ but a law passed subsequently to the filing of the appeal, relieving the party from taxation, may be relied on at the trial as the earliest possible opportunity to take advantage of it.⁴⁴

The Supreme Court may add a penalty imposed by law, in giving judgment in tax cases, although the same has not been included by the accounting officers in the settlement appealed from, and the question of the liability of the company appellant to the same was not, therefore, before the lower court.⁴⁵

Where an appeal is taken after the payment of the tax fixed in the settlement appealed from, no question arises for the con-

time. See *Com. v. Phila. County*, 157 Pa. 531 (1893); *Phila. v. Com.*, 52 Pa. 451.

³⁹*Spangler v. Com.*, 8 Watts 57 (1839); *Com. v. Farrely*, 1 P. & W. 52 (1829).

⁴⁰*Com. v. Reitzel*, 9 W. & S. 109 (1845). See *Elder v. Com.*, 55 Pa. 485 (1867).

⁴¹*Com. v. Central Petroleum Co.*, 1 Pears 373 (1867). See *Com. v. American Tobacco Co.*, 173 Pa. 531 (1896).

⁴²*Com. v. Western Land & Imp.*

Co., 156 Pa. 455 (1893); *Porter v. Com.*, 1 P. & W. 252; *Com. v. Porter*, 21 Pa. 385 (1853); *Del. L. & W. R. R. Co. v. Com.*, 66 Pa. 64 (1870); *Com. v. McKeesport Borough*, 1 Dauph. Co. Rep. 191 (1885).

⁴³*Com. v. Porter*, 21 Pa. 385 (1853).

⁴⁴*Com. v. Honeybrook Coal Co.*, 2 Pears 365 (1869).

⁴⁵*Com. v. Phila. & Read. Coal & Iron Co.*, 145 Pa. 283 (1892); 29 W. N. C. 507.

sideration of the court, and no injustice resulting from the payment of the tax can be remedied in such proceeding.⁴⁶

The court will not entertain an appeal from a settlement which settlement is based on facts not existing within the year for which the settlement was made, but will set aside the settlement without prejudice to the Commonwealth's right to require a proper return for the year in controversy, and settle a new account.⁴⁷

On the trial of an appeal from a settlement of the accounting officers, evidence which does not support any specification of appeal will be excluded.⁴⁸

An appeal lies to the court of common pleas of Dauphin county from the action of the accounting officers disallowing a claim against the Commonwealth, as well as from settlements made against taxables.⁴⁹

Where an appeal from a tax settlement made by the officers of the Commonwealth is tried by a court without a jury, and no special finding of fact is set out in the opinion, and none was requested, except that the court should adopt the appraisement of the company's officers, the Supreme Court will assume that the court below found the facts correctly on which it expressly declared that its judgment rested.⁵⁰

On appeal from settlements of the accounting officers, the question of the amount of tax due will come up de novo, and the amount of tax must be ascertained by the court as a question of fact.⁵¹

On the trial of an appeal from a settlement for state taxes, credit will not be allowed for the payment of an illegal tax voluntarily paid.⁵²

A settlement for tax which appears to have been made at the proper time for a period and amount which a company was under legal obligation to pay, will not be set aside because of a statement in said settlement that it is made for a wrong period. The

⁴⁶Com. v. Pittsburgh & L. E. R. R. Co., 1 Dau. Co. Rep. 131 (1887); Luzerne Co. v. Com., 2 Dau. Co. Rep. 253 (1890).

⁴⁷Com. v. N. Y., Susq. & Western Coal Co., 1 Dau. Co. Rep. 248 (1897).

⁴⁸Com. v. McKeesport Borough, 1 Dau. Co. Rep. 191 (1885).

⁴⁹Fitler v. Com., 31 Pa. 406 (1858).

⁵⁰Com. v. Beech Creek R. R. Co., 188 Pa. 203 (1898).

⁵¹Com. v. Lehigh Valley R. R. Co., 3 Luz. Leg. Obs. 147 (1863).

⁵²Com. v. Lehigh Valley R. R. Co., 3 Dauph. Co. Reps. 309 (1890).

words "ending the first Monday of November" in such a case are mere surplusage and should be stricken from the record;⁵³ nor will a settlement be set aside because it recites that tax is imposed therein under a wrong act, if the settlement was made under authority of a law fixing the tax at the same rate as that imposed in said settlement.⁵⁴

A receiver's appeal cures the technical difficulty of a settlement made against a defunct corporation, and the judgment which will have been entered simply binds the assets in the hands of the receiver.⁵⁵

§ 745. Interest on overdue state taxes.⁵⁶ In the settlement by the auditor general and state treasurer of all accounts for taxes due the Commonwealth, they shall charge interest upon the amount of tax or balance or balances found due the Commonwealth, at the rate of twelve per centum per annum from thirty days after the time said taxes or balances become due and payable to the time of the settlement of the same; and all balances due the Commonwealth on accounts settled by the auditor general and state treasurer shall bear interest from sixty days after date of settlement at the rate of twelve per centum per annum until the same are paid; and any judgment recovered thereon shall bear interest at the rate of twelve per centum per annum until paid; and the payment of interest as aforesaid shall not relieve any corporation from any of the penalties or commissions prescribed by law for neglect or refusal to furnish reports to the auditor general or to pay any claim due to the Commonwealth from such corporation: Provided, that the auditor general shall first have sent to such corporation a statement of the amount due.⁵⁷

The foregoing provision is a re-enactment in nearly the same language of § 13, of the Act of June 7, 1879, P. L. 112, which was a re-enactment of §§ 2 and 3 of the Act of April 9, 1867, P. L. 58, but which changed the time from which interest should be computed, under the provisions of the second clause of the section, from thirty to sixty days. Section 30 of the Act of June 1, 1889, therefore, supersedes said earlier acts.

⁵³Com. v. Lehigh Valley R. R. Co., 129 Pa. 429 (1889).

⁵⁴Com. v. Chester City, 123 Pa. 626 (1888).

⁵⁵Com. v. American Life Ins. Co., 14 Pa. C. C. 216 (1893).

⁵⁶See §§ 757 and 773.

⁵⁷Sec. 30, Act of June 1, 1889, P. L. 420.

The said section provides for the payment of interest on two classes of accounts, one class where the account may be said to be due and payable before the settlement thereof by the auditor general and state treasurer, and the other class consisting of accounts which are not due and payable until settlement thereof by said officers. As a tax may not be said to have been assessed until settlement thereof has been made by the accounting officers, it follows that no interest can be charged on the amount thereof until sixty days after the date of settlement and the receipt thereof by the corporation charged therewith. Otherwise, apparently, as to bonus on charters.⁵⁸

"The 11th section of the Act of June 7th, 1879, imposed interest at 12 per cent. for non-payment of the tax, but there is a strong implication from the proviso of the act that the corporation shall be in default after 'the auditor general shall first have sent to such corporation a statement of amount due.'"⁵⁹

Section 35 of the Act of March 30, 1811, 5 Sm. L. 228, provided that accounts should bear interest from three months after date of settlement until paid,⁶⁰ but it was held that this provision did not prevent the charge for interest as part of the settlement on moneys wrongfully withheld.⁶¹

On receiving tax dividends from a railway company, the city of Philadelphia allowed the railway company to reckon the tax upon an improper basis so that a less sum than was actually due was received. Held, that the company was not liable for interest on the amount underpaid until demand therefor.⁶²

A city collected the tax on its loans and paid the same to the city treasurer for the whole year during which the money was received, and for more than four months after the treasurer was in office no return or payment as required by law was exacted by the Commonwealth's officers; held, that interest on the tax at twelve per centum should be lowered to six per centum.⁶³

Interest is chargeable on accounts on which no other rate is

⁵⁸See § 773.

⁵⁹Com. v. Standard Oil Co., 101 Pa. 119, 150 (1882); Com. v. Western Union Tel. Co., 2 Dau. Co. Rep. 40 (1899); 15 W. N. C. 331; 17 Phila. 602.

⁶⁰Com. v. Easton Bank, 10 Pa. 442 (1849); Del. Div. Canal Co. v. Com., 50 Pa. 399, 409 (1865);

Com. v. Cooke, 50 Pa. 201 (1865); Com. v. Wyoming Valley Coal Co., 50 Pa. 410 (1865).

⁶¹Com. v. Porter, 21 Pa. 385 (1853).

⁶²Second and Third Streets Pass. Rwy. Co. v. Phila., 51 Pa. 465 (1866).

⁶³Com. v. Phila. City and

specifically prescribed, at the legal rate of six per centum under the provisions of the Act of March 30, 1811, 5 Sm. L. 228, § 35.⁶⁴

It would seem that interest may be collected on penalties settled by the accounting officers after three months from date of settlement, under the provisions of 35th section of the Act of March 30, 1811.⁶⁵

§ 746. Accounting officers may make estimated settlement.⁶⁶ In case any person neglects or refuses to furnish his account, and the auditor general and state treasurer should deem it more conducive to the public interest, by reason of the supposed smallness of the debt, or from any other circumstances, not to proceed to compel the exhibition of such account, but to make an estimated settlement from the previous account settled, or from any other reasonable data, of the probable amount of the account of such delinquent, they, the said auditor general and state treasurer, are hereby authorized so to do: Provided, however, that they add to every such estimated account not exceeding fifty per cent. on its amount, to include any losses which might otherwise accrue to the Commonwealth from such neglect or refusal to furnish accounts; and the state treasurer shall proceed in the recovery of moneys so due the Commonwealth as in other cases: And provided also, that no allowance for commissions shall in any instance be made by the accountant officers, in cases of refusal or neglect to furnish accounts.⁶⁷

§ 747. Auditor general and state treasurer may revise settlements within one year from date thereof. The auditor general and state treasurer, at the request of each other, or of the party, shall revise any settlements made by them, except such as have been appealed from, or which by any other proceedings have been taken out of their offices, if such request be made within twelve months of the date of settlement; but after that time no settlement on which a final discharge has been granted shall be opened, but the same shall be quieted and finally closed.⁶⁸

County, 157 Pa. 558 (1893);
Com. v. Phila. County, 157 Pa.
531 (1893).

*Com. v. Southworth, 18 Phila.
593 (1884).

*Com. v. Cooke, 50 Pa. 201
(1865).

*See § 782, *infra*, for estimated settlements against corporations neglecting to make capital stock reports.

*Sec. 14, Act of March 30, 1811,
5 Sm. L. 228.

*Sec. 16, Act of March 30, 1811,
5 Sm. L. 228.

When the auditor general and state treasurer have settled taxes against a taxpayer, and the taxes thus assessed have been paid, the account, except as to clerical mistakes, is closed after the lapse of a year, and may then be reopened only by an order of the board of revision created by the Act of April 8, 1869, P. L., 266.⁶⁹

The auditor general and state treasurer may resettle a tax account within a year from the date of settlement, although the amount of tax originally settled has been paid before resettlement,⁷⁰ and although the amount of the resettlement is greater than the amount of the original settlement.⁷¹

Section 16 of the Act of March 30, 1811, *supra*, relates to resettlements only and not to original settlements.⁷²

§ 748. Resettlement of accounts of public officers by auditor general. In addition to the general powers of the auditor general over accounts conferred [conferred] by existing laws, it shall be the duty of said officer, from time to time, to resettle and correct all accounts of public officers, where it may appear from such accounts in his office, or from other information in his power that errors exist in any of said accounts prejudicial to the interests of the Commonwealth; but in no case shall the amount of the balance of any such account be reduced, except in the cases and within the time heretofore authorized by law for re-examining accounts: Provided, that this section shall not be construed to apply to accounts settled and examined prior to the first day of January, eighteen hundred and forty.⁷³

"The Act of 1846 probably gives the auditor general the right to resettle accounts with the state already settled by the county auditors. . . ." ⁷⁴

§ 749. Revision of settlements by auditor general, state treasurer and attorney general—Board of public accounts. The auditor general, state treasurer and attorney general be

⁶⁹See § 749.

⁷⁰*Com. v. Pennsylvania Co.*, 145 Pa. 266 (1891). In this case the court says that the accounting officers may resettle at any time within twelve months after payment of the tax, but the language of the act is "twelve months of the date of settlement."

⁷¹*Com. v. People's Traction Co.*, 183 Pa. 405 (1898).

⁷²*Com. v. N. Y. Pa. & O. R. R. Co.*, 188 Pa. 169 (1898).

⁷³Sec. 8, Act of April 21, 1846, P. L. 413.

⁷⁴*Com. v. Minnick's Admr.*, 2 D. R. 669 (1892).

authorized to revise any settlement made with any person or body politic by the auditor general, when it may appear from the accounts in his office, or from other information in his possession, that the same has been erroneously or illegally made, and to resettle the same according to law, and to credit or charge, as the case made be, the amount resulting from such resettlement upon the current accounts of such person or body politic.⁷⁵

In exercising the powers conferred by the foregoing act, the auditor general, state treasurer and attorney general sit as a board, which is known as the Board of Public Accounts, although this title is not known to the law, except in appropriations for the payment of the clerk of the board, etc.

"This statute creates a board of revision, composed of the attorney general, auditor general and state treasurer, and clothes them with a sort of judicial power over accounts that have been closed more than one year. . . . They must sit as a board to hear, after notice to all parties interested, and to determine the validity of the reasons assigned for the opening of the account. If they decline to open the account, the proceeding ends. If they open it, they must proceed to revise and adjust the account 'according to law and equity,' and certify the balance due. Here we have a system easy to understand and apply. Current accounts are stated yearly by the auditor general against those liable to state taxes. These accounts, when approved by the state treasurer, are binding on the taxpayer unless he appeals to the courts. Still, they are open to correction, on request, within one year. . . . If they have been made to show too small a sum due to the state, this mistake may be corrected under the Act of 1846. If more than a year has elapsed . . . and the account cannot be corrected for clerical error, a revision becomes necessary, and an application must be duly made to the board, which has exclusive jurisdiction in such cases, and which must keep some record of its business and its decisions."⁷⁶

The Board of Public Accounts has authority to open and revise illegal settlements of the Board of Revenue Commissioners.⁷⁷

It seems that the Act of 1869 does not authorize the reopening of a settlement which has passed to a judgment, the amount of which has been paid and satisfied.⁷⁸

⁷⁵Sec. 1, Act of April 8, 1869, *zerne Co.*, 32 W. N. C. 486 P. L. 19. (1888); 1 *Mona* 418.

⁷⁶*Com. v. Penna. Co.*, 145 Pa. 266 (1891). ⁷⁷*Com. v. Western Union Tel. Co.*, 2 *Dauph. Co. Rep.* 40 (1888).

⁷⁸*Lackawanna County v. Com.*, 156 Pa. 477 (1893); *Com. v. Lu-*

§ 750. Assignment of credits allowed by board of public accounts. Whenever as the result of any action taken by the auditor general, state treasurer and attorney general, in accordance with the provisions of the act to which this is a supplement, there shall have been any amount whatsoever credited or charged to the account of any person or body politic, the amount thereof shall be subject to assignment, and when duly assigned shall be applied to the account of the assignee: Provided, that all taxes due from any source whatever unto the Commonwealth by such person or body politic, the assignor, shall first have been duly paid.⁷⁹

In any case where under the provisions of the act to which this is a supplement, there has been or shall hereafter be made by the auditor general, state treasurer, and attorney general, a resettlement of any account of any corporation leasing or operating the works, or owing either the whole or a majority of the capital stock of another corporation, or whose works are leased or operated, or of whose capital stock either the whole or a majority is owned by another corporation, the credit or charge, as the case may be, resulting from such resettlement, may, with the consent of the proper officers of both companies, be transferred to the account of either of said corporations.⁸⁰

§ 751. Compromise of taxes—Payment by installments. The state treasurer, with the approbation of the auditor general, is hereby authorized at any time after the final settlement of any account, if he deems it conducive to the public interests, to compromise with any public debtor or his sureties for the payment of any debt by installments: Provided, that the amount of the debt be not lessened nor the security of it impaired, and that both principal and interest, with costs, shall be paid within seven years from such compromise.⁸¹

§ 752. Compromise of taxes due by insolvent corporations. It shall be lawful for the state treasurer and auditor general to settle and adjust with any corporation, whether domestic or foreign, that has heretofore carried on business in this state, and which is now indebted to the Commonwealth, but has

⁷⁹Sec. 1, Act of June 10, 1881,
P. L. 103.

⁸⁰Sec. 1, Act of May 4, 1876, P.
L. 101.

⁸¹Sec. 13, Act of March 30, 1811,
5 Sm. L. 228.

gone into liquidation, become insolvent, or ceased to carry on business, and which has no known or available property in this or any other state that may be seized in the execution of process thereof issued out of any of the courts in this or any other state, and [they] may compound or settle any taxes due by the same to this Commonwealth on such terms as may be adjudged by said officers to be for the best interests of the Commonwealth: Provided, that such extension, composition, or settlement shall be approved by the auditor general.⁸²

§ 753. Receipts for state taxes. No receipt for money paid into the state treasury shall be good or available in law, unless countersigned by the auditor general, to whom all receipts of money paid into the treasury shall be presented. The auditor general is hereby authorized and required to provide suitable books in which he shall enter or cause to be entered the amount and date of the receipts presented, and the names of the parties to whose credit the money was paid; and he shall then countersign the same with his official signature.⁸³

No receipt for money paid into the state treasury shall be good or available in law, unless signed by the state treasurer, or by some person known to be in his employ, and for whom he is answerable.⁸⁴

§ 754. Fiscal year. The financial year shall terminate on the thirtieth day of November in each year.⁸⁵

§ 755. Lien of state taxes.⁸⁶ All taxes imposed by this act⁸⁷ shall be a lien upon the franchises and property, both real and personal, of corporations, companies, associations, joint stock associations and limited partnerships, from the time the said taxes are due and payable; and whenever the franchises or property of a corporation, company, association, joint stock association or limited partnership shall be sold at a judicial sale, all taxes due the Commonwealth shall first be allowed and paid out of the proceeds of such sale, before any judgment, mortgage or other claims which shall be entered of record or become a lien after the passage of this act.⁸⁸

⁸²Sec. 1, Act of June 10, 1881, P. L. 114.

⁸³Sec. 8, Act of April 10, 1849, P. L. 631.

⁸⁴Sec. 36, Act of March 30, 1811, 5 Sm. L. 228.

⁸⁵Cl. 3, Act of April 21, 1840, P. L. 742.

⁸⁶See §§ 756, 756a.

⁸⁷That is, practically all state taxes.

⁸⁸Sec. 31, Act of June 1, 1889,

The amount of balance of every account settled agreeably to this act, due to the Commonwealth, shall be deemed and adjudged to be a lien, from the date of the settlement of such account, on all the real estate of the person or persons indebted, and on his or their securities throughout this Commonwealth.⁸⁹

The auditor general is hereby authorized and required to transmit to the prothonotaries of the respective counties, to be by them entered of record, certified copies of the liens which may hereafter arise by virtue of the 12th section of the Act of March 30, 1811, entitled "An Act to amend and consolidate the several acts relating to the settlement of the public accounts and the payment of the public moneys, and for other purposes," as soon as the same are settled and entered in the books of the accounting officers as directed by said act.⁹⁰

The decisions relative to liens of state taxes are reviewed in the following opinion:

"The question here presented is whether or not upon distribution of the proceeds of a sheriff's sale of personal property of a corporation the Commonwealth on a claim for unpaid taxes is entitled to preference over the execution creditor.

"By the Act of March 30, 1811, § 12, 5 Sm. L. 231, the balance of an account for unpaid state taxes is made a lien upon the real estate of the person indebted from the date of settlement of such account.

"This was followed by the Act of April 16, 1827, § 4, P. L. 472, which contains this provision: 'The auditor general is hereby authorized and required to transmit to the prothonotaries of the respective counties, to be by them entered of record, certified copies of the liens which may hereafter arise by virtue of § 12 of the Act of March 30, 1811, . . . as soon as the same are settled and entered in the books of the accounting officers as directed by said act.'

"In two cases under this act, each of which arose upon distribution of proceeds of a sheriff's sale of real estate, it was held that a failure to file a certified statement as required by the Act of 1827 postponed the Commonwealth's claim to those of other lien creditors. In *re Wilson*, 4 Pa. 164; *Arnold's Est.*, 46 Pa. 277.

"Then followed the Act of June 7, 1879, P. L. 112, § 14 of which provided that taxes imposed by that act upon corporations and limited partnerships should be liens, not only upon their real estate but also upon their franchises and personal property 'from the time the said taxes are due and payable,' and should be first paid out of the pro-

P. L. 420. This is a re-enactment and extension of § 14, Act of June 7, 1879, P. L. 112.

⁸⁹Sec. 12, Act of March 30, 1811, 5 Sm. L. 228.

⁹⁰Sec. 4, Act of April 16, 1827, P. L. 471.

ceeds of any judicial sale of such property or franchises before any other liens thereon.

"Under this act it was held that the Acts of 1811 and 1827 were still in force, and that the filing of the certified statement required by the latter act was still necessary to entitle the Commonwealth's lien for taxes to priority over other liens upon the property of the delinquent debtor. *Wm. Wilson & Son Silversmith Co.'s Est.*, 150 Pa. 285 (1892).

"The subsequent Act of June 1, 1889, P. L. 420, so far as it affects the case before us, may be treated as a virtual reenactment of the Act of 1879.

"In *Goodwin's Gas Stove and Meter Co.'s Est.*, 166 Pa. 296 (1895), it was held by the Supreme Court, adopting the opinion of Judge Thayer, that where there were no lien creditors to whose claims that of the Commonwealth for unpaid taxes could be postponed for failure to file a certified statement thereof, such failure did not destroy the statutory lien as against the debtor himself, and such lien was available as against common creditors of the debtor claiming under an assignment by the latter in trust for their benefit. And this, on the theory that as against the Commonwealth, a lien creditor, their rights could rise no higher than those of their assignor, and as the Commonwealth's lien was good against him without a certificate, it would also be good against them.

"This case was followed by *Gladden v. Chapman*, 188 Pa. 586, which, like that before us, arose on exceptions to the sheriff's special return of distribution of proceeds of sale of property of a corporation indebted to the state for taxes. It was there held by the Supreme Court, adopting the opinion of Judge Collier, that the Commonwealth acquired no preference over other lien creditors where the certified statement of unpaid taxes was filed, but not until the day after the sheriff's sale of the delinquent debtor's property.

"In the case at bar the contest is between an execution creditor and the Commonwealth as to priority of payment out of the proceeds of sale of corporate personal property.

"The execution in question was placed in the sheriff's hands Feb. 6, 1908. Levy was made February 8, and sale advertised for February 14. On that day (February 14), before the sheriff's sale, the Commonwealth filed in the prothonotary's office a certified statement of capital stock taxes due by the execution debtor for the years 1901, 1903, 1904, and 1905. A notice of the filing of this certificate was served upon the sheriff, who gave notice thereof to bidders at the sale.

"We are of opinion that by the filing of this certificate the Act of 1827 was complied with, and the Commonwealth thereby acquired preference over the execution creditor entitling the former to be paid out of the proceeds of this sheriff's sale. From the authorities above cited it is evident that the claim of the Commonwealth for unpaid taxes becomes a lien upon the delinquent corporation's property by operation of law from the time the taxes were payable, but it is only

available as against other lien creditors in case the certified statement required by the Act of 1827 be filed during the life of the lien, i. e., before it has been discharged by the sheriff's sale. The tax lien cannot be given preference over anything after it has ceased to exist. In *Gladden v. Chapman* there was nothing for the certified statement to operate upon. The property had been discharged by the sale. Here the lien was still in force when the Commonwealth did what the law required to be done in order to give a preference to the claim for taxes.

"It follows that the schedule of distribution returned by the sheriff should be sustained. The exceptions are accordingly, dismissed, and it is ordered that the proceeds of the sale in question be distributed in accordance with the said schedule, subject, however, to the prothonotary's legal commissions, if the said proceeds have been paid into court."⁹¹

To entitle a tax lien under the Revenue Act of 1879 to priority over other lien creditors, a certified copy must be filed with the prothonotary under the provisions of § 14 of the Act of April 14, 1827. That section is not repealed by the Act of June 7, 1879. The system provided by the Act of 1811 for the settlement of taxes applies to taxes imposed by later legislation. Hence, the Act of 1827 is applicable to the settlement of taxes of later date.⁹²

But the Commonwealth has a first lien for taxes as against common non-lien creditors even though no copy of the lien therefor has been filed under the provisions of the Act of April 13, 1827.⁹³

In order to obtain priority of lien for its taxes, the Commonwealth must settle taxes and file liens therefor within a reasonable time after they become due. Otherwise its claims therefor will have no priority over those of other lien creditors. Hence, where liens were filed seven years after taxes had become due and settlements had been made therefor by the accounting officers, it was held that the Commonwealth was not entitled to any priority for such taxes.⁹⁴

It seems that the Commonwealth has a lien for taxes on corporate loans, not collected from the holders of the loans of a corporation by the treasurer of such corporation.⁹⁵

⁹¹*Brown, Trustee, v. Pittston Ice Co.*, 35 Pa. C. C. 94 (1908). See *Forney v. Com.*, 10 Pa. 405 (1849).

⁹²*Wm. Wilson & Son Silver-smith Co.'s Estate*, 150 Pa. 285 (1892).

⁹³*Goodwin Gas Stove & Meter*

Co.'s Assigned Estate, 166 Pa. 296 (1895); 35 W. N. C. 234.

⁹⁴*Darlington v. Marshall-Kennedy Milling Co.*, 56 Pitts. 201 (1909).

⁹⁵*Darlington v. Marshall-Kennedy Milling Co.*, 56 Pitts. 201 (1909).

The filing of a lien under the provisions of the Act of April 14, 1827, one day after the sheriff's sale, postpones the lien of the Commonwealth to a lien vested prior to such filing,⁹⁶ but where the certificate of lien is filed on the day of sale, but before the sale, the lien acquires a preference over the execution creditor in the distribution of the fund raised by the sale.⁹⁷

Where certain liens were filed against a corporation and judgment immediately entered thereon on the order of the auditor general, it was contended that § 12 of the Act of 1891 did not constitute taxes due by corporations liens on the property thereof, but that said section applied only to claims against natural persons. Rule to strike off lien made absolute.⁹⁸ In view of later decisions, however, there does not seem to be any doubt but that taxes settled against corporations are liens.

§ 756. Proceedings for the collection of state taxes.

The Commonwealth usually brings suit in assumpsit for taxes, on the basis of the settlements made by the auditor general and state treasurer, in the Court of Common Pleas of Dauphin County, under the provisions of the following act:

The Court of Common Pleas of the County of Dauphin is hereby clothed with jurisdiction throughout the state for the purpose of hearing and determining all suits, claims and demands whatever, at law and in equity, in which the Commonwealth may be the party plaintiff, for accounts, unpaid balances, unpaid liens, taxes, penalties and all other causes of action, real, personal and mixed.^{98a}

For the purpose of collecting any penalty, balance, debt due or other demand of the Commonwealth, a writ of foreign attachment may issue against the property, real or personal, of any nonresident defendant or defendants; and the same shall be executed and proceeded in as other cases of foreign attachment are now prosecuted under existing laws, except that no bail shall be required by the sheriff to whom said writ shall be directed; and the Commonwealth shall not be required to give any bond or recognizance, prior to the execution of any final process.⁹⁹

⁹⁶Gladden v. Chapman, 188 Pa. 586 (1898).

⁹⁷Brown v. Pittston Ice Co., 36 Pa. C. C. 237 (1908).

⁹⁸Com. v. Lehigh Valley R. R. Co., 5 Pa. C. C. 474 (1888).

^{98a}Sec. 1, Act of April 7, 1870, P. L. 57.

⁹⁹Sec. 2, Act of April 7, 1870, P. L. 57.

In a suit to recover taxes due by a corporation it should appear from the declaration that the claim is one which the accounting officers are authorized to settle; that it was examined and adjusted by the auditor general and entered on his books and submitted to the state treasurer and approved by him; together with the date of such settlement and approval; that at least thirty days' notice was given to the defendant, as required, by law and that the settlement remains in full force and unappealed from.¹⁰⁰

In an action of debt upon a settlement made by the accounting officers for taxes, the court is bound to conclude, in the absence of any averment to the contrary in the affidavit of defense, that the defendant had notice of the settlement, and by declining to appeal therefrom concede its correctness in every particular, although the affidavit in such case shows a valid defense had the same been interposed by way of appeal but cannot be considered in such a proceeding.¹

In entering a lien for taxes in a prothonotary's office under the provisions of the Act of 1827, the auditor general has no authority to direct the entry of judgment for said tax.²

§ 756a. Scire facias on liens for state taxes. Since the passage of the following act, the Commonwealth may file liens and proceed by scire facias, instead of by assumpsit:

In all cases where settlements for bonus or taxes have been or may hereafter be made in favor of the Commonwealth, and liens therefor are entered in any court of common pleas of any county, it shall be lawful for writs of scire facias to issue thereon and be prosecuted to judgment and execution, in the same manner as such writs are ordinarily employed.³

§ 757. Commissions for the collection of state taxes. On all claims for taxes or other demands due the Commonwealth, collected by the attorney general, or any attorney employed by him and acting under his direction, there shall be paid and recovered, for the use of the Commonwealth, an attorney's commission of five per centum upon the amount of recovery, not exceed-

¹⁰⁰Com. v. Catawissa, W. & E. Railroad Co., 1 Pears. 341 (1863); Com. v. National Safety I. & T. Co., 1 Pears. 336 (1862).

¹Com. v. Phila. & Read. Railroad Co., 5 Dauph. Co. Rep. 150 (1902). The practice is, however,

to permit corporations to offer any matter in defense, notwithstanding the foregoing decision.

²Com. v. Lehigh Valley R. R. Co., 5 Pa. C. C. 474 (1888).

³Sec. 1, Act of April 27, 1909, P. L. 250.

ing ten thousand dollars, and, upon the amount of the recovery in excess of ten thousand dollars, such commission, in case of dispute, as shall be allowed by the court having jurisdiction of the controversy, not exceeding five per centum, in addition to interest at the rate of six per centum per annum: Provided, that the payment of such attorney's commission or interest shall not be deemed to affect liability for any penalty payable under existing laws.⁴

§ 757a. Employment of counsel by auditor general or attorney general. Whenever in the opinion of the auditor general or attorney general the interests of the Commonwealth require it, they or either of them shall have power to employ the services of resident attorneys to assist in the prosecution and trial of causes and the prosecution of claims, for which services such reasonable compensation as the circumstances will justify, or as may have been agreed upon, shall be allowed by the auditor general.^{4a}

Under the provisions of the foregoing act, it was held that the auditor general issue his warrant of attorney to the city treasurer of Philadelphia to bring suit for the collection of a billiard license, under the provisions of the Act of March 4, 1824.^{4b}

§ 758. State claims against estates of decedents. All debts owing by any person within this state, at the time of his decease, shall be paid by his executors or administrators, so far as they have assets in the manner and order following, viz:

I. Funeral expenses, medicine furnished and medical attendance given during the last illness of the decedent, and servants' wages not exceeding one year;

II. Rents not exceeding one year;

III. All other debts without regard to the quality of the same, except debts due to the Commonwealth which shall be last paid.⁵

No debts of a decedent, except they be secured by mortgage or by judgment, entered or revived by scire facias within five years prior to the death of such decedent, shall remain a lien on the real estate of such decedent longer than two years after the decease of such debtor, unless an action for the recovery thereof be

⁴Sec. 1, Act of June 1, 1907, P. L. 383. This section supersedes § 3 of the Act of April 7, 1870, P. L. 57. See § 744.

^{4a}Act of April 17, 1861, P. L. 371.

^{4b}Com. v. Dehner, 12 W. N. C. 223 (1882).

⁵Sec. 21, Act of Feb. 24, 1834, P. L. 76.

commenced, and be indexed in the judgment index as other liens are indexed, against such decedent his heirs, executors or administrators within the period of two years after his decease and duly prosecuted to judgment; or a copy or particular written statement of any bond, covenant, debt or demand, where the same is not payable within the said period of two years, be filed within the period of two years after his decease, in the office of the prothonotary of the county where the real estate to be charged is situate, and be indexed in the judgment index as other liens are indexed, and then to be a lien only for the period of five years after such bond, covenant, debt or demand is so filed and indexed, unless the same be revived by writ of scire facias against the decedent, his heirs, executors, or administrators and the devisee, alienee, or owner of the land sought to be charged, the same as is now provided in case of judgment liens. Provided, that in no case shall the lien continue for a period longer than two years after said bond, covenant, debt or demand becomes due. . . .⁶

Under the foregoing provisions all debts due the Commonwealth lose their lien upon a decedent's real estate, both generally and against heirs and devisees, unless the Commonwealth institutes proper proceedings within two years after the death of the decedent to continue the lien.⁷

§ 758a. County and city officers to make monthly returns and payments of state taxes. On the first Monday of July next, and on the first Monday of each month thereafter, it shall be the duty of each county and city officer, to render to the auditor general and state treasurer, under oath or affirmation, monthly returns of all moneys received for the use of the Commonwealth, designating under proper heads, the sources from which said moneys were received, and to pay the said moneys into the state treasury.

The returns herein required from county and city officers and prothonotaries of the Supreme Court, except those rendered by city and county treasurers, shall include fees received during the month from all sources.⁸

⁶Act of June 14, 1901, P. L. 562, amending the Act of June 8, 1893, P. L. 392, which superseded § 24 of the Act of Feb. 24, 1834, P. L. 76.

⁷Koering's Estate, 34 Pa. Super. Ct. 425 (1907).

⁸Sec. 1, Act of May 24, 1893, P. L. 125.

§ 758b. Penalty. Any officer who shall refuse or neglect, for the period of ten days after the same shall become due, to make the return and payment as required by the preceding section of this act shall forfeit his fees and commissions on the whole amount of money collected during the month, and shall be subject to a penalty of ten per centum which shall be added to the amount of tax found due.⁹

§ 758c. Accounting officers may examine accounts of county and city officers refusing to make return or payments, and settle accounts against them. The auditor general or state treasurer, or either of them, or any agent appointed by them or either of them, are hereby authorized to examine the books and accounts of any county or city officer who shall refuse or neglect to make the return and payment as required by the first section of this act, and upon information obtained from such examination the auditor general and state treasurer shall settle an account against such officer in the usual manner for the settlement of public accounts, and in the settlement of said accounts shall add not to exceed fifty per centum to the amount of the tax to provide for any losses which might otherwise result to the Commonwealth from neglect or refusal of the said officers to furnish the return.¹⁰

§ 758d. Collection of overdue accounts—Interest. If the amount of an account settled in accordance with the preceding section of this act shall not be paid in, to the state treasury within fifteen days from the date of settlement of said account, then the same shall be placed in the hands of the attorney general for collection and shall bear interest from fifteen days after date of settlement, at the rate of twelve per centum per annum, and if the auditor general and state treasurer or either of them, shall deem it conducive to the public interest to proceed immediately upon said account against the sureties of the said officer, they shall so instruct the attorney general, who shall proceed in accordance with such direction received from them, or either of them.¹¹

§ 758e. Repealing clause. All acts or parts of acts incon-

⁹Sec. 2, Act of May 24, 1893,
P. L. 125.

¹⁰Sec. 3, Act of May 24, 1893,
P. L. 125.

¹¹Sec. 4, Act of May 24, 1893,
P. L. 125.

sistent herewith, or which are substantially re-enacted hereby, shall be and the same are hereby repealed, saving, preserving and excepting unto the Commonwealth the right to collect any taxes accrued or accruing under said repealed acts or parts of acts.¹²

The foregoing act repeals the Act of May 7, 1889, P. L. 114, which in turn repeals the Act of May 14, 1874, P. L. 175.

§ 758f. Prosecution of certain defaulting officers in the court of common pleas of Dauphin county. Hereafter it shall be lawful to commence and prosecute to final judgment and execution, in the court of common pleas of Dauphin county, suits against any and all persons who are or may hereafter be officers of any description whatsoever within this Commonwealth, appointed by the governor, or by the board of canal commissioners, or elected by either house of the legislature, or by both houses in joint ballot, and who shall become defaulters in not paying over or accounting for money in their hands, due and belonging to the Commonwealth, and against their sureties, in the same manner and with like effect as if the said defaulting persons and officers and their sureties were residents of the said county of Dauphin; and for this purpose all necessary writs of summons, writs of fieri facias, writs of fieri facias with clause of attachment, to attach debts owing and stocks, as practiced in other cases, and writs of venditioni exponas, and alias and pluries writs of the same kind, may issue from said court into any county, and, at the same time, if deemed necessary, into the several counties of this Commonwealth, there to be transmitted by mail to the sheriff or coroner, as the case may require, whose duty it shall be to execute the same, and make return thereof in the same manner as is now practiced in relation to testatum writs.¹³

The state treasurer and auditor general are hereby authorized and required, as often hereafter as any defalcation of any officer aforesaid may occur, to commence suits in said court of common pleas of the county of Dauphin, in the manner prescribed in the preceding sections of this act, against all such officers who may appear, from the records of their departments, to be defaulters, in failing to pay over to the treasury of this Commonwealth, and their sureties, all or any sums of money in their hands, due and belonging to the Commonwealth and shall prosecute each and all

¹²Sec. 5, Act of May 24, 1893,
P. L. 125.

¹³Sec. 12, Act of April 16, 1845,
P. L. 532.

of said suits with the utmost dispatch, to final judgment and execution: Provided, that suits shall not be commenced in cases where the auditor general and state treasurer shall designate the said parties as being insolvent.¹⁴

The said officers shall not incur any expense for professional services exceeding three per cent. on the sums actually collected and received into the treasury, from suits brought under the provisions of this act.¹⁵

§ 758g. Judgments against defaulting officers to be liens in all counties. In all cases where judgments may be obtained in said county of Dauphin, under the provisions of this act, certified transcripts of the docket entries thereof may be entered, at the instance of the state treasurer, in the court of common pleas of any other county or counties, wherein he believes any such defendants may own real estate; and the same shall, from the date of such entry, be a lien upon all the real estate of the defendants situate in such county or counties, in the same manner and with like effect as if the said real estate were situate in the county of Dauphin; and as soon as the amount of such judgment shall be paid, the said state treasurer shall cause satisfaction to be entered thereon on the payment of all costs by the defendants.¹⁶

¹⁴Sec. 14, Act of April 16, 1845,
P. L. 532.

¹⁵Sec. 13, Act of April 16, 1845,
P. L. 532.

¹⁶Sec. 15, Act of April 16, 1845,
P. L. 532.

CHAPTER XXXIV.

BONUS ON CHARTERS.

- § 759. History.
- 760. Bonus on domestic corporations.
- 761. Bonus payable on actual increases of capital stock.
- 762. Bonus on foreign corporations.
- 763. Foreign corporations to make bonus reports.
- 764. Penalty for failure to report.
- 765. Bonus on limited partnership associations.
- 766. Forfeiture of charters for failure to pay bonus.
- 767. Decisions relative to the payment of bonus by corporations incorporated under special acts.
- 768. Bonus on railroad companies.
- 769. Bonus on renewal of charters.
- 770. Bonus on foreign corporations becoming domestic.
- 771. Bonus on merging and consolidating corporations.
- 772. Payment of bonus does not exempt from taxation.
- 773. Bonus not a tax—Interest on bonus.
- 774. Lien of bonus.
- 775. Special provisions relative to bonus on certain classes of corporations.
- 776. Miscellaneous.

§ 759. **History.** Prior to the adoption of the Constitution of 1874, corporations were formed under the provisions of special acts, and those of a few general acts providing for the incorporation of various kinds of corporations. Beginning about 1849, these special acts generally stipulated that a certain amount of bonus should be paid on the incorporation of the companies formed thereby, respectively; usually at the rate of one-half of one per cent. on the actual amount of capital, payable in four annual installments. The Act of April 7, 1849, P. L. 563, authorizing the incorporation of manufacturing companies of certain kinds, provided that such companies should pay a bonus of one-half of one per cent., payable in five annual installments; and a supplement to the said act, approved April 20, 1863, provided for the payment of the same bonus in the same manner.¹

¹The earliest and most striking payment of a bonus by the Commonwealth occurred in the case

The 15th section of the Act of May 1, 1868, P. L. 133, was the first provision to provide generally for the payment of bonus by all corporations except "railroad, canal, turnpike, bridge or cemetery companies and companies incorporated for literary, charitable or religious uses." The bonus fixed by the said section was one-fourth of one per cent. on the amount of capital stock which said companies were authorized to have, respectively, payable in two equal installments; and a like bonus on any subsequent increase thereof, payable in a like manner.

The 44th section of the general incorporation Act of April 29, 1874, P. L. 107, contained a similar provision, applicable to all corporations organized under said act for profit, with the exceptions contained in the Act of 1868. The Act of May 22, 1878, P. L. 97, amended the Act of 1874 in this regard, by inserting a clause that "when any corporation shall have reduced its capital stock in accordance with the provisions of the 23rd section of this act, such corporation shall not be liable in the aggregate to a greater bonus than one-fourth of one per cent. upon the capital stock as altered and reduced."

The Act of May 7, 1889, P. L. 115, required that bonus should be paid on the authorized amount of all increases of capital stock, instead of upon the actual amount of such increases, as had theretofore been the practice under the decisions of the courts.²

The Act of June 15, 1897, P. L. 155, provided that from and after the date of its passage, all corporations formed under the provisions of the Act of April 29, 1874, or any of its supplements, should pay a bonus of one-third of one per cent. on the authorized amount of their capital stock, the full amount thereof to be paid before their charters issued, and a like bonus on the authorized amount of all subsequent increases of capital stock, to be paid in full immediately after the authority for the increase had been given.

of the United States Bank as a state corporation, after the expiration of its charter from the National Government. By the Act of Feb. 13, 1836, P. L. 36, this corporation was required to pay two million dollars "in consideration of the privileges granted by this act and in lieu of all taxes on dividends." It does not

appear how much was considered, in arriving at this sum, to be paid for the privileges granted and how much in commutation of the tax on dividends. See *Bank of United States v. Commonwealth*, 17 Pa. 400 (1851).

²*Com. v. Penna. Mfg., M. & S. Co.*, 6 *Dau. Co. Rep.* 107 (1889).

From and after the passage of the said Act of June 15, 1897, the requirements as to the payment of bonus by corporations were as follows:

1. In the case of corporations formed under the provisions of special acts, bonus was payable at the rate and in the manner prescribed by said acts, respectively, unless such corporations had accepted the provisions of the Act of 1874, in which case it would seem that they were subject to bonus at the rate prescribed by the Act of April 29, 1874.

2. If incorporated under the Act of April 29, 1874, or any supplement thereto, such corporations were subject to the payment of bonus at the rate of one-third of one per cent. on the authorized amount of their capital stock and the authorized amount of increases thereof. The entire amount of such bonus on their original capital stock to be paid before the issue of their charters, and upon subsequent increases of capital stock as soon as the authority therefor was granted.

3. In the case of corporations of the kinds not exempt under the provisions of § 15 of the Act of May 1, 1868, and not incorporated under the provisions of the Act of 1874 and its supplements, nor under those of special acts, bonus was payable at the rate of one-fourth of one per cent., one-half to be paid before the granting of charter or immediately after the authorization of the increase, and the other half at the expiration of one year from said date, under the provisions of said Act of 1868.

The Act of May 3, 1899, P. L. 189, simplified the exaction of bonus in the following respects:

- I. All corporations are subject to the payment of bonus, except building and loan associations and corporations of the first class, incorporated under the provisions of the Act of April 29, 1874, which corporations of the first class are those incorporated by the courts, and usually not for profit.

- II. The rate of bonus is fixed at the uniform rate of one-third of one per cent. upon the authorized amount of capital stock and a like amount on any subsequent authorized increase thereof, but by the provisions of § 3 of the Act of February 9, 1901, P. L. 5,³ bonus is now payable only on the actual amount of increases of capital stock.

- III. All corporations formed before the passage of the Act of

³See § 761.

1899, whether under the provisions of special or general laws, are subject to the payment of a bonus of one-third of one per cent. upon any increase of capital stock authorized after the passage of the said act.⁴

§ 760. Bonus on domestic corporations. All corporations hereafter created under any general or special law of this Commonwealth, except building and loan associations, and excepting all corporations named in the first class of section two of an act, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four,⁵ shall pay to the state treasurer, for the use of the Commonwealth, a bonus of one-third of one per centum upon the amount of the capital stock which said company is authorized to have, and a like bonus on any subsequent authorized increase thereof, and a like bonus shall be paid by all such companies heretofore incorporated upon any increase of their capital stock hereafter authorized.⁶ And no company as aforesaid shall have or exercise any corporate powers until the said bonus is paid, and the Governor shall not issue letters patent to any company until he is satisfied that said bonus has been paid to the state treasurer. And no company incorporated as aforesaid shall go into operation, or exercise any corporate powers or privileges until said bonus has been paid. The Secretary of the Commonwealth shall not permit the filing in his office of any proceedings for increase of capital stock until he is satisfied that the said bonus upon said authorized increase has been paid to the state treasurer.⁷

The charge denominated "bonus" in Pennsylvania is known in some other states as an "organization tax."

§ 761. Bonus payable on actual increases of capital stock. . . . Upon the actual increase of the capital stock or indebtedness of such corporation, made pursuant thereto, it shall be the duty of the president or treasurer of such corpora-

⁴See §§ 760, 768.

⁵Corporations of the first class are those incorporated by the courts, and, as a rule, not for profit. See § 51, Eastman on Private Corporations, 2d Ed.

⁶See § 768 as to when an increase of stock is authorized.

⁷Sec. 1, Act of May 3, 1899, P. L. 189. This act supersedes the Act of June 15, 1897, P. L. 155, which related only to corporations formed under or accepting the provisions of the Act of April 29, 1874, P. L. 73.

+ tion, within thirty days thereafter, to make a return to the Secretary of the Commonwealth, under oath, of the amount of such increase actually made, and concurrently therewith such corporation shall pay to the state treasurer, for the use of the Commonwealth, such bonus on the actual increase shown by said return as shall then be prescribed by law. . . .⁸

Where a corporation, incorporated prior to the passage of the Act of May 1, 1868, P. L. 108, § 15, is subsequently to said date authorized to increase its capital stock from time to time, by vote of the stockholders, to an amount not exceeding a certain sum, bonus may not be imposed upon a greater sum than the increase actually authorized and issued.⁹

§ 762. **Bonus on foreign corporations.** From and after the passage of this act all corporations, limited partnerships or joint stock associations, except foreign insurance companies, chartered or created by or under the laws of any other state, or of the United States, or of any foreign country, whose principal office or chief place of business is located in this Commonwealth, or which have any part of their capital actually employed wholly within this state, in addition to complying with the laws now in force as to such corporations, limited partnership or joint stock associations, shall pay to the state treasurer, for the use of the Commonwealth, a bonus of one-third of one per centum upon the amount of their capital actually employed or to be employed wholly within the state of Pennsylvania, and a like bonus upon such subsequent increase of capital so employed.¹⁰

The auditor general and state treasurer are hereby authorized to settle, in the usual manner and have collected, an account against any corporation, limited partnership or joint stock association violating the provisions of this act, with a penalty of fifty per centum for failure to make report and pay said bonus.¹¹

+ ⁸Sec. 3, Act of Feb. 9, 1901, P. L. 5. This provision evidently repeals the Act of May 7, 1889, P. L. 115, which made bonus payable upon the authorized amounts of increases of capital stock, instead of upon the actual amounts thereof. Prior to the passage of the Act of 1889 bonus was on the amount of actual increases. Com.

v. Pa. M. M. & S. Co., 6 Dau. Co. Rep. 107 (1889).

⁹Com. v. Provident Life & Trust Co. of Phila., 12 D. R. 516 (1903); 6 Dauph. Co. Rep. 109.

¹⁰Sec. 1, Act of May 8, 1901, P. L. 150.

¹¹Sec. 3, Act of May 8, 1901, P. L. 150.

The foregoing act applies only to capital of foreign corporations invested within the state after May 8, 1901, the date of the passage of the act,¹² and a lower court has held that the act does not apply to foreign corporations which, prior to its passage, had any capital invested within the state, so that such corporations are exempt from bonus on all investments within the state, whether made before or after May 8, 1901.¹³

A foreign corporation doing business in Pennsylvania is not subject to the payment of bonus on so much of its capital as is invested in the shares of stock of a Pennsylvania corporation which has paid bonus on its capital.¹⁴

A foreign corporation whose principal office and place of business is outside of the state, but which maintains a deposit in a bank in Pennsylvania, not used for corporate purposes within the state, is not subject to the payment of bonus on the amount of such deposit. Under the revenue laws of the state, doing business and employing or using capital or property, as applied to foreign corporations, are equivalent terms, which mean the employment of capital or the using of capital or property in aid or exercise of some corporative activity.¹⁵

The payment by a foreign corporation of bonus under the provisions of the Act of May 8, 1901, will not relieve it on its becoming a domestic corporation under the provisions of the Act of June 9, 1881, P. L. 89, from the payment of bonus for its domestic letters patent.¹⁶

The purchase of the capital stock of a domestic corporation by a foreign corporation is not such an employment of capital within the state as will render the purchasing company liable to the payment of bonus, under the Act of May 8, 1901, P. L. 150.¹⁷

¹²Com. v. Danville Bessemer Co., 207 Pa. 302 (1903); Com. v. Crucible Steel Co. of America, 7 Dau. Co. Rep. 20 (1904); Com. v. Tri-State Gas Co., 7 Dauph. Co. Rep. 316 (1903).

¹³Com. v. American Steel Hoop Co., 11 Dau. Co. Rep. 92 (1908).

¹⁴Com. v. D. B. Martin Co., 6 Dau. Co. Rep. 97 (1903); Com. v. Lycoming Imp. Co., 6 Dau. Co. Rep. 103; Com. v. Crucible

Steel Co. of America, 7 Dauph. Co. Rep. 20 (1904).

¹⁵Com. v. Tonopah Mining Co., 12 Dau. Co. Rep. 91 (1909).

¹⁶In re Application Metal Edge Box Co., 7 Dauph. Co. Rep. 296 (1904).

¹⁷Com. v. D. R. Martin Co., 6 Dauph. Co. Rep. 97 (1903); Com. v. Lycoming Improvement Co., 6 Dauph. Co. Rep. 103 (1903).

§ 763. Foreign corporations to make bonus reports.

In addition to the duty of complying with the other laws now in force, no corporation, limited partnership or joint stock association liable to pay bonus under this act shall go into operation or transact any business in this Commonwealth without having first made a report under oath to the auditor general stating, specifically:

First. The state or country in which incorporated or created.

Second. The date of incorporation or organization.

Third. The location of its chief office in this state.

Fourth. The name and address of its president and treasurer.

Fifth. The amount of its bonded indebtedness.

Sixth. The amount of its authorized capital stock.

Seventh. The amount of capital stock paid in.

Eighth. The amount of capital employed wholly within the state of Pennsylvania.

And each of said corporations, limited partnerships or joint stock associations, shall make a similar report annually thereafter, not later than the thirtieth day of November of each year.¹⁸

§ 764. Penalty for failure to report. The auditor general and state treasurer are hereby authorized to settle, in the usual manner and have collected, an account against any corporation, limited partnership or joint stock association violating the provisions of this act, with a penalty of fifty per centum for failure to make report and pay the said bonus.¹⁹

§ 765. Bonus on limited partnership associations. Any partnership association formed under the provisions of an act, entitled "An Act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances," approved the second day of June, Anno Domini one thousand eight hundred and seventy-four, and any partnership formed under the provisions of an act, entitled "An Act authorizing the formation of partnerships in which one or more or all of the partners, may limit their liability for the debts of the partnership to the amount of capital subscribed by such partner or partners, respectively, and providing penalties for violation of its provisions," approved the ninth day of May, Anno Domini

¹⁸Sec. 2, Act of May 8, 1901,
P. L. 150.

¹⁹Sec. 3, Act of May 8, 1901,
P. L. 150.

one thousand eight hundred and ninety-nine,²⁰ shall pay to the state treasurer, for the use of the Commonwealth, a bonus of one-third of one per centum upon the amount of capital stock which said company or companies shall have at the time of formation of such partnership, and a like bonus on any subsequent increase thereof, and no company formed under the provisions of said acts shall go into operation or exercise any privileges until said bonus has been paid.²¹

No article of association forming a partnership association under either of the acts aforesaid, or any amendment thereto increasing the capital thereof, shall be accepted of record by the recorder of deeds in any county in this Commonwealth unless there be annexed thereto a receipt of the state treasurer for the amount of bonus due under this act, said receipt to be made a part of the articles of association and recorded therewith.²²

Any company formed under the provisions of either of the foregoing acts, which shall not pay the bonus required by this act, the articles of association thereof shall be void and of no effect, and every person a party thereto shall be held liable as general partners.²³

Limited partnership associations formed under the provisions of the Act of May 9, 1899, P. L. 261, are subject to the payment of bonus under the provisions of the foregoing act.²⁴

§ 766. Forfeiture of charters for failure to pay bonus.

Any corporation created by general or special law, in arrears for bonus upon the amount of capital stock which such corporation is authorized to have, or in arrears for bonus upon any authorized increase thereof, which shall neglect or refuse to pay the same to the state treasurer within one year after the passage of this act, the charter thereof is hereby declared to be forfeited, and such corporation shall not thereafter exercise any corporate powers or privileges, but the charter thereof shall be absolutely void and of no effect.²⁵

Inasmuch as all bonus is now required to be paid before char-

²⁰Limited Partnership Taxation, 28 Pa. C. C. 582 (1903).

²¹Sec. 1, Act of May 8, 1901, P. L. 149.

²²Sec. 2, Act of May 8, 1901, P. L. 149.

²³Sec. 3, Act of May 8, 1901, P. L. 149.

²⁴Limited Partnership Taxation, 28 Pa. C. C. 582 (1903).

²⁵Act of May 21, 1901, P. L. 270.

ters are issued, or before proceedings for increases of capital stock are filed in the office of the Secretary of the Commonwealth, the foregoing act can affect only corporations which owed bonus before the passage of the Act of May 3, 1899, and still owe the same. Similar provisions for the forfeiture of the charters of corporations for failure to pay taxes, such as § 3 of the Act of April 24, 1874, P. L. 68, have remained inoperative, it being evident that vested rights may not be destroyed in so summary a manner.

§ 767. Decisions relative to payment of bonus by corporations incorporated under special acts. "By § 15 of the Revenue Act of May 1, 1868, it was enacted that from that date every company—with exceptions that do not affect this case—incorporated by any general or special law, should pay a bonus of one-quarter of one per cent. This necessarily repealed the 6th section of the Act of 1854 [imposing a bonus of one-half of one per cent. on corporations formed under said act] so far as corporations created under said act after May 1, 1868, were concerned, and left it to operate only on those created before that date."²⁶

The 6th section of the Act of 1854 was unconditionally repealed by the Act of April 3, 1872, P. L. 37, and by said act the Commonwealth waived its right to collect tax accrued before the repeal.²⁷

Section 15 of the Act of May 1, 1868, P. L. 108, subjects to bonus, as provided therein, a company incorporated before the passage of said act, which had issued stock to the full amount authorized by its charter, on an increase authorized by an act passed subsequent to 1868, but such bonus is upon the actual increase as made from time to time, and not upon the authorized increase.²⁸

It is to be presumed from the fact that a special act of assembly providing for the incorporation of a company subsequent to May 1, 1868, is enrolled among the laws of the state that the bonus required to be paid by the Act of May 1, 1868, has been paid.²⁹

²⁶Com. v. Alliance Coal & Mining Co., 13 W. N. C. 324 (1883); 16 Phila. 574, per Simonton, J.

²⁷Com. v. Alliance Coal & Mining Co., 13 W. N. C. 324 (1883); 16 Phila. 574.

²⁸Com. v. Provident Life & Trust Co. of Phila., 12 D. R. 516 (1903); 6 Dau. Co. Rep. 109.

²⁹Com. v. California & Texas Ry. Const. Co., 5 Dau. Co. Rep. 181 (1902).

A corporation chartered by special act of assembly in 1865 had power to increase its capital stock from time to time. By a supplement an act incorporating another company was made part of its charter, providing a course of procedure by which notice was to be given to the auditor general whenever the capital stock should be increased. Nothing in its charter required it to pay bonus on such increase. On its increasing its capital stock in 1881, the accounting officers settled an account for bonus, under the General Bonus Acts of 1868 and 1874. Held, that it was not subject to such bonus. Bonus is not a tax, and therefore cannot be imposed by an act passed subsequent to the granting of a charter.³⁰

An act of assembly conferred upon a corporation all the powers, privileges, and rights employed by another company, which other company was required by its charter to pay a bonus. Held, that the former company was not compelled to pay a bonus.³¹

A corporation paying a bonus to the state on condition of being relieved from the payment of a tax on its dividends is not exempt from taxation on its capital stock.³²

For purposes of state taxation, the character of a corporation, which by its charter has various, different and distinct franchises, is to be ascertained from the nature of the principal business in which it is engaged at the time the tax in question accrued.³³

A company incorporated under the Act of April 21, 1854, on condition of paying a bonus of one-half of one per cent. on its capital stock in four annual installments, is not relieved from such payment because it reduced its capital stock by one-half, under the Act of April 10, 1862, which authorized a reduction of its capital stock, two days before an installment fell due.³⁴

§ 768. Payment of bonus by railroad companies. Prior to the passage of the Act of May 3, 1899, P. L. 189, railroad companies were not subject to the payment of bonus, being specifically exempted from the operation of the several acts requiring the payment of the same. The said Act of 1899, how-

³⁰Com. v. Erie & Western Transportation Co., 107 Pa. 112; 16 W. N. C. 140 (1885).

³¹Com. v. Pittsburgh Forge & Iron Co., 2 Pears. 1874 (1870).

³²Com. v. Pittsburgh Forge & Iron Co., 2 Pears. 374 (1870).

³³International Nav. Co. v. Com., 104 Pa. 38 (1883); 13 W. N. C. 481.

³⁴Com. v. American Kaolin Co., 2 Pears. 364 (1878).

ever, subjects them to payment of bonus in common with all other corporations, except building and loan associations and corporations of the first class.

Railroad companies organized under the Act of April 4, 1868, P. L. 62, may, under authority of the Act of June 4, 1883, P. L. 67, increase their capital stock to \$150,000 per mile without the payment of bonus, and when several such companies have the right to so increase under said act, and such companies are consolidated and merged, the consolidated company, under the provisions of the Act of May 16, 1861, P. L. 702, has the same exemption from the payment of bonus, though the consolidation did not take place until after the passage of the Act of May 3, 1889.³⁵

It therefore seems that the authorization referred to by the Act of 1899—"and a like bonus shall be paid by all such companies heretofore incorporated upon any increase of their capital stock hereafter *authorized*"—is the authority of law under which an increase may be made, and not the action of the corporation in making the increase.

§ 769. Bonus on renewal of charters. Banks incorporated under letters patent under the provisions of the Act of April 26, 1889, P. L. 61, are subject to the payment of bonus on the amount of capital with which they are incorporated, but banks whose charters are extended by a certificate of the Secretary of the Commonwealth under the provisions of the Act of May 10, 1889, P. L. 185, are not required to pay bonus on such extension.³⁶

Corporations whose charters are about to expire by their own limitation, desiring to be rechartered, must pay bonus.³⁷

§ 770. Bonus on foreign corporations becoming domestic. Foreign corporations becoming domestic under the provisions of the Act of June 9, 1881, P. L. 89, are required to pay bonus under the first section of the act providing that foreign

³⁵Com. v. Buffalo & Susquehanna Railroad Company, 207 Pa. 154 (1903); Com. v. Buffalo, Rochester & Pgh. Ry. Co., 207 Pa. 160 (1903).

³⁶Commonwealth v. Warren

Savings Bank, 2 Dauph. Co. Rep. 281 (1893).

³⁷In re Payment of Bonus by Corporations being Rechartered. Atty. Gen. Rep. 1895-1896, page 369 (1879); Victor Coal Co., 13 D. R. 616 (1904).

corporations "may become corporations of this state under the provisions of said last named act," viz: the act of April 29, 1874, which act provides for the payment of bonus.³⁸

§ 771. Payment of bonus on merging and consolidating corporations.³⁹ The Act of March 31, 1905, P. L. 95, amending § 3 of the Act of May 29, 1901, P. L. 349, provides that no merger and consolidation shall be complete until the consolidated corporation shall have paid to the state treasurer a bonus of one-third of one per centum "on all its corporate stock in excess of the amount of capital stock of the several corporations so consolidating, upon which the bonus required by law had been theretofore paid."

Under the provisions of said act no payment of bonus need be made on the consolidation of two or more corporations unless the capital stock which the consolidated company is authorized to have exceeds the aggregate capital stocks of the merging corporations.⁴⁰

The recent Act of May 3, 1909, P. L. 408, providing for the consolidation and merger of any corporations incorporated under the provisions of any general or special law, contains a similar provision.

§ 772. Payment of bonus does not exempt from taxation. The payment of a bonus on the charter of a corporation at the time of a grant does not exempt the grantee of the franchise from all taxation, except such as the state has reserved in the charter itself the right to impose. All such grants are taken subject to the exercise of the sovereign power of the grantor.⁴¹

A provision in an act of incorporation that a company formed under it should pay to the Commonwealth a bonus upon its capital stock "in lieu of any tax on dividends," does not exempt the corporation from the payment of tax upon its capital stock.⁴²

The payment of bonus by a corporation does not relieve it from

³⁸In re Application Metal Edge Box Co., 7 Dau. Co. Rep. 296 (1904).

³⁹See § 768.

⁴⁰Merger of Fire Insurance Ccs., 9 Dauph. Co. Rep. 180 (1906).

⁴¹Minot v. Phila. W. & B. R. R.

Co., 7 Phila. 555 (1870); Com. v. Girard Bank, 2 Pears. 323; Com. v. Central Petroleum Co., 1 Pears. 386 (1868).

⁴²Com. v. Jacobus & Nimick Manufacturing Co., 1 Dauph. Co. Rep. 82 (1881).

the payment of the mercantile license tax, if it engages in the business of buying and selling merchandise.⁴⁴

§ 773. **Bonus not a tax—Interest on bonus.** "Can the defendant be charged with interest on this account? The Act of 1874 does not in terms impose interest. And if this were a tax, properly so-called, there could be no interest charged unless provided for in the statute, but we do not think it is a tax. It is rather a price paid for a charter and the act fixed the date when it becomes due, and when the defendant failed to pay on and after that date it withheld money due the Commonwealth and was in the position of any other debtor in default."⁴⁵ Interest was charged in this case at six per cent. from the date when the bonus became due until the date of settlement. In a later case⁴⁶ interest was charged from thirty days after the date of settlement, at the same rate.

§ 774. **Lien of bonus.** Bonus would seem to be an "An account settled agreeably to this act, due to the Commonwealth," within the meaning of § 12 of the Act of March 30, 1811, 5 Sm. L. 228,⁴⁷ and therefore a lien on the real estate and securities of a corporation; and such lien is divested by the judicial sale of the property of a corporation under the provisions of the Act of May 25, 1878.⁴⁸

§ 775. **Special provisions relative to bonus on certain classes of corporations.** The following acts relate to special classes of corporations:

By the Act of March 22, 1887, § 10 (P. L. 8), traction and motor companies pay the same bonus as provided by the Act of April 29, 1874, and companies reorganized under said Act of 1887 are credited with the amounts of bonus which may have been previously paid by them.

Under the provisions of the Act of May 29, 1885, § 15 (P. L. 29), natural gas companies organized under said act pay bonus as

"Com. v. Bailey, Banks & Biddle Co., 20 Pa. Super. Ct. 210 (1902).

"Com. v. Alliance Coal Mining Co., 13 W. N. C. 324 (1883); Com. v. Bailey, Banks & Biddle Co., 20 Pa. Super. Ct. 210 (1902); Com. v. Western Transportation Co., 107 Pa. 112 (1884).

"Com. v. Provident Life & Trust Co. of Phila., 12 D. R. 516 (1903).

"See § 755.

"Reorganization by Purchasers at Judicial Sales, 2 Chest. Co. 90 (1883).

provided in the Act of 1874, and, on reorganizing under the Act of 1885, companies are credited with the bonus which they may previously have paid, and similar credits are given to electric light, heat and power companies, reorganized under the provisions of the Act of May 9, 1889, P. L. 136, by the third section of that act.

The Act of June 25, 1895 (P. L. 312), which provides for the extension of the charters of manufacturing companies incorporated under the Act of April 29, 1874, the charters of which were limited in operation to a period of twenty-five years, also provides that such companies, so renewing their charters, shall first pay "the fee and bonus on their capital stock now fixed by law for the renewal or extension of a corporate charter."

"The bonus . . . due to the Commonwealth upon the capital stock of corporations as provided for by the Act of first of May, 1868, or by any other act, shall not apply to or be due from mutual savings fund or building and loan associations."⁴⁹

§ 776. Miscellaneous. The payment of bonus on an increase of capital stock does not estop the Commonwealth from bringing suit to declare such increase void as having been illegally made.⁵⁰

Interest is due upon overdue bonus at the rate of six per centum per annum.⁵¹

A corporation having the power under its charter to operate a railroad or a steamship line, and having ceased to operate its railroad, is actually engaged in operating a steamship line, is liable for bonus on an increase of its capital stock.⁵²

⁴⁹Sec. 8, Act of April 10, 1879, P. L. 17.

⁵⁰Com. v. Reading Traction Co., 4 Dauph. Co. Rep. 82 (1901); 25 Pa. C. C. 156.

⁵¹Com. v. Alliance Coal Mining Co., 13 W. N. C. 324 (1883).

⁵²International Nav. Co. v. Com., 13 W. N. C. 481 (1883); 104 Pa. 38.

CHAPTER XXXV.

TAX ON CAPITAL STOCK.

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- 819. Corporations exempt from tax under provisions of special acts.
- 820. Miscellaneous.

§ 777. **History and nature of the tax.** The tax on capital stock had its inception in the Act of June 11, 1840, P. L. 612, which was held to impose a tax on capital stock in fact, and not a tax on dividends.¹ By the Act of March 21, 1843, P. L. 121, joint stock associations were made subject to the tax. Under these acts the capital stock of all domestic corporations and joint stock associations, on which dividends or profits of one per cent. per annum were made or declared, were taxable (a) at one-half mill on every dollar of the value thereof, and, in addition, (b)

¹Com. v. Pa. Ins. Co., 13 Pa. 165 (1850).

at one-half mill for each one per cent. of dividend or profit made or declared.

These acts were followed by the Act of April 29, 1844, P. L. 486. By this act corporations and stock associations were made taxable whether dividends or profits were made and declared on their stock, or not. If the dividends equalled or exceeded six per centum, the tax was on the par value of the stock at the rate of one-half mill for each one per centum of dividends. If there were no dividends, or if the dividends were less than six per centum, then the tax was at the rate of three mills on the appraised value of the stock.

Various changes were made in the tax by the Acts of April 12, 1859, P. L. 529; May 1, 1868, P. L. 108; April 24, 1874, P. L. 68; March 20, 1877, P. L. 6; June 7, 1879, P. L. 112; June 30, 1885, P. L. 93, and June 1, 1889, P. L. 420.

The tax, however, remained substantially the same as established by the Act of 1844.

A table containing a comparative statement of the provisions of these various acts will be found in the writer's book "Taxation for State Purposes in Pennsylvania."

Under these various acts the tax on capital stock was held to be a tax on the property and assets of corporations and not a franchise tax;² but an examination of said acts shows that under their provisions the value of the entire property and assets of corporations was not reached by the capital stock tax, but merely the clear value of the interests of the stockholders therein.

If a corporation have a capital stock of one hundred thousand dollars, and its shares, aggregating that amount, have a par market value, it is evident that one hundred thousand dollars is not the gross value of the property and assets of the company, but the clear value thereof to the stockholders. Purchasers of the stock in the market believe that after the company has paid its operating expenses and interest on its indebtedness, there will remain a sufficient amount to pay the stockholders dividends which will warrant a valuation of their stock at par; or, what amounts to the same thing, that, on the winding up of the corporation,

²Com. v. Standard Oil Co., 101 Pa. 119 (1882), and numerous cases cited at page 145; Fox's Appeal, 112 Pa. 337 (1886); Coatesville Gas Co. v. Chester Co., 97 Pa. 476 (1891); Pullman's Palace Car Co. v. Com., 141 U. S. 18.

there will remain, after all indebtedness has been paid, a sum sufficient to pay one hundred thousand dollars to the stockholders.

To get at the gross value of the property and assets of a corporation, it is evident that the investment in the corporation of the bondholders must be taken into consideration.

What is said by Chief Justice Mitchell, in his dissenting opinion in *Commonwealth v. N. Y., P. & O. R. R. Company*, 188 Pa. 169 (1898), of the Act of June 8, 1891, is certainly true of the earlier acts.

"The subject-matter of taxation under the Act of June 8, 1891, is capital stock, eo nomine, independently, and without reference to the property which it represents. It is to be taxed 'at its actual value in cash, not less however than the average price which said stock sold for during said year,' etc. The officers of the corporation concerned are required to make sworn returns under seventeen specific heads, all of which tend to show the value of the stock as such, and not a single one of which refers directly or indirectly to the value of the property which such stock represents. The value of the capital stock in the hands of the shareholders is the value of their resulting interest in the property of the corporation, subject to its debts and incumbrances, in view of the uses to which it may be put under its corporate franchises, etc., and the value of such resulting interest is the true subject of tax under the statute."

Judge Simonton, in the opinion of the court below, in said case, referring to the revenue acts prior to the Act of June 8, 1891, said:

"The nature of the test of value was in all cases an inquiry into the result of the activity of the corporations for the tax year, and an inference of value from these results, rather than a direct estimate of the value of the tangible property and assets of the corporation."

The Act of June 8, 1891, P. L. 229, was in most respects a re-enactment of the 20th and 21st sections of the Act of June 1, 1889, P. L. 420, but its title is as follows: "An Act to provide increased revenues for the purpose of relieving the burdens of local taxation . . . and providing for greater uniformity of taxation *by taxing all the property of corporations, limited partnerships and joint stock associations having capital stock*, at the rate of five mills on each dollar of its actual value." The act did away with the dividend basis of valuation, and provided that in all cases the stock should be appraised at its actual value in cash, not less than the average price which such stock sold for during

said year, and not less than the price or value indicated or measured by net earnings or by the amount of profit made and either declared in dividends or carried into surplus or sinking fund.

It is still the "capital stock" which is to be appraised, and the data required to be given by corporations in their reports is precisely the same as that required by the Act of June 1, 1889, P. L. 420, and, as stated by Chief Justice Mitchell, *supra*, throws no light upon the value of the property and assets, as contradistinguished from the capital stock.

However, in the aforesaid case of *Commonwealth v. N. Y., P. & O. R. R. Co.*, 188 Pa. 169 (1898), it was held by a divided court that, under said Act of 1891, the question of the actual value in cash of the capital stock is a question of fact which must be determined by considering the value of a corporation's tangible property and assets of every kind, including its bonds, mortgages and moneys at interest, and its franchises and privileges; and the amount of the incumbrances on its property and franchises is also a relevant fact to be considered but it is not to be specifically deducted from the valuation so ascertained and determined.

The tax is, therefore, a tax on the property, assets, franchises³ and earning capacity of corporations.⁴

³*Com. v. Delaware, Susq. & S. R. R. Co.*, 165 Pa. 44 (1894).

⁴*Com. v. N. Y., P. & O. R. R. Co.*, 188 Pa. 169 (1898); *Com. v. Beech Creek R. R. Co.*, 188 Pa. 203 (1898); *Com. v. Ontario, Carbondale & Scranton Ry. Co.*, 188 Pa. 205 (1898); *Com. v. Pine Creek Ry. Co.*, 188 Pa. 198 (1898); *Com. v. Fall Brook Ry. Co.*, 188 Pa. 199 (1898); *Com. v. Manor Gas Coal Co.*, 188 Pa. 195 (1898).

The Preamble to the Act of June 8, 1891, is of interest, as throwing light upon the object sought to be attained by said act, and is, therefore, here given.

"Whereas, There is a widespread demand for the enactment of such measures as will bring about the equalization of taxation

and the relief of local taxation upon real estate;

"And whereas, Moneyed capital, taxable under the first section of the act entitled 'A further supplement to an act, entitled "An act to provide revenue by taxation," approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine,' approved the first day of June, Anno Domini one thousand eight hundred and eighty-nine, does not bear its just proportion of the burdens of local taxation;

"And whereas, It is desirable to largely increase the state appropriation for the support of the public schools, out of an increased taxation upon the capital stock of certain corporations imposed

§ 777a. The tax is constitutional.⁵

§ 778. Imposition and rate of tax. Every corporation, joint stock association, limited partnership,⁶ and company whatsoever from which a report is required under the twentieth section hereof, shall be subject to and pay into the treasury of the Commonwealth annually a tax at the rate of five mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special and preferred, as ascertained in the manner prescribed in said twentieth section; and it shall be the duty of the treasurer or other officers having charge of any such corporation, joint stock association or limited partnership,

by the twentieth and twenty-first sections of said act;

And whereas, experience has shown that the said twentieth and twenty-first sections result, in many cases, in requiring corporations which pay dividends less than six per centum to pay a larger amount of tax than corporations paying dividends of six per centum are required to pay;

"And whereas also, it has shown that the mode prescribed in the twenty-first section of said act for taxing corporations paying dividends of six per centum and upwards at a rate of tax to be measured by the dividends results, in many cases, in corporations with large investments in bonds, mortgages, and moneys at interest, paying a less rate of tax than other corporations without capital stock and individual citizens are required to pay, under the first section of said act, upon the same kind of property;

"And whereas also, it appears that the taxes imposed upon corporations and individual citizens by the first and twenty-first sections of said act can be made much more nearly uniform by taxing all corporations, limited

partnerships, and joint-stock associations having capital stock, at a fixed rate of five mills upon each dollar of the actual value of their whole capital stock, including as well their bonds, mortgages, and moneys at interest, as their franchises and property of other kinds."

⁵Com. v. National Oil Co., Lim., 157 Pa. 516 (1893); Com. v. Mill Creek Coal Co., 157 Pa. 524 (1893); Com. v. Sharon Coal Co., 164 Pa. 284 (1894); Com. v. Brush Elec. Lt. Co., 145 Pa. 147 (1891); Com. v. Provident Life & Tr. Co., 12 Dauph. Co. Rep. 104 (1909).

⁶The limited partnerships referred to are limited partnership associations formed under the provisions of the Act of June 2, 1874, P. L. 271, and the Act of May 9, 1899, P. L. 261, amended by the Act of July 9, 1901, P. L. 625, and not limited or special partnerships formed under the Act of March 21, 1836, P. L. 143: Limited Partnership Taxation, 28 Pa. C. C. 582 (1903); Same Title, 18 Pa. C. C. 87 (1896); 5 D. R. 288; Com. v. Sanderson & Robb Imp. Co., 3 Dau. Co. Rep. 116 (1881).

upon which a tax is imposed by this section, to transmit the amount of said tax to the treasury of the Commonwealth within thirty days from the date of the settlement of the account⁷ by the auditor general and state treasurer: Provided, that for the purpose of this act interests in limited partnerships or joint stock associations shall be deemed to be capital stock, and taxable accordingly: . . .⁸

§ 779. What corporations are taxable—Exemption of building and loan associations. Under the provisions of § 4 of the Act of June 8, 1891, P. L. 229, § 780, *infra*, the following classes of corporations are required to make capital stock reports, and, under the provisions of § 1 of the Act of June 7, 1907, P. L. 430, § 778, *supra*, such classes are made subject to the payment of the tax on capital stock, viz: all domestic corporations, limited partnership associations and joint stock associations having capital stock, except (a) banks, and (b) savings institutions; and all foreign corporations, limited partnership associations doing business in and liable to taxation in Pennsylvania, or having capital employed or used therein in the name of any limited partnership, joint stock association, corporation, etc., or in any other manner, except (c) foreign insurance companies. Trust companies are relieved from the payment of the tax by the Act of June 13, 1907, P. L. 640.⁹

Mutual building and loan associations were exempted from the payment of the tax on capital stock by the Act of May 22, 1883, P. L. 39, which provides as follows:

Mutual loan and building associations shall be exempt from the provisions of each and every law imposing taxes for state purposes on their capital stock or mortgages and other securities for moneys loaned to their members. . . .¹⁰

⁷Inasmuch as corporations have sixty days from the dates of settlements wherein to take appeals (see § 774), and as interest may not be charged upon the amounts of settlements until the expiration of the same period (§ 745), the requirement of payment within thirty days is a dead letter.

⁸Sec. 1, Act of June 7, 1907, P. L. 430, amending § 1, Act of June

8, 1893, P. L. 353, which amended § 5, Act of June 8, 1891, P. L. 229, which amended § 21 of the Act of June 1, 1889, P. L. 420. It will be noted that the title of the Act of 1907 is defective.

⁹See § 894, *infra*.

¹⁰*Bourguignon Bldg. Assn. v. Com.*, 1 Penny. 193 (1881); 10 W. N. C. 161.

Inasmuch as it was held that the Act of April 10, 1879, P. L. 16, which first exempted these associations, was repealed by the General Revenue Act of June 7, 1879, P. L. 112 (1), it would seem that the Act of May 22, 1883, P. L. 39, *supra*, must have been repealed by the subsequent revenue acts which omitted this exemption, but the point has never been raised, and building and loan associations are not taxed upon their capital stock. They are, however, subject to the payment of a special tax upon their matured shares of stock, which will be considered later.¹¹

It will be observed that all corporations with capital stock, with the exceptions noted, are made taxable, whether organized for profit or not, but the writer is of the opinion that corporations not for profit do not generally make capital stock reports and thus escape taxation, this for the reason that inasmuch as such corporations are incorporated by the courts, the auditor general has no knowledge of their existence, if they fail to register in his office, as he does have of corporations formed for profit, certificates of the incorporation of which are furnished him by the Secretary of the Commonwealth. An act requiring the prothonotaries of the several courts of common pleas to certify to the auditor general all corporations incorporated by their several courts is desirable.

§ 780. Corporations to make capital stock reports. Hereafter, except in the case of banks, savings institutions and foreign insurance companies, it shall be the duty of the president, chairman or treasurer of every corporation having capital stock, every joint stock association and limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this Commonwealth, and of every corporation, joint stock association and limited partnership whatsoever, now or hereafter incorporated or organized by or under the laws of any other state or territory of the United States, or by the United States, or by any foreign government, and doing business in and liable to taxation within this Commonwealth, or having capital or property employed or used in this Commonwealth by or in the name of any limited partnership, joint stock association, company, or corporation whatsoever, association or associations, copartnership or copartnerships, person or persons, or in any other manner, to make a report in writing to the auditor general

¹¹See § 900.

in the month of November, one thousand eight hundred and ninety-two and annually thereafter, stating specifically:

- First.* Total authorized capital stock.
- Second.* Total authorized number of shares.
- Third.* Number of shares of stock issued.
- Fourth.* Par value of each share.
- Fifth.* Amount paid into the treasury on each share.
- Sixth.* Amount of capital paid in.
- Seventh.* Amount of capital on which dividend was declared.
- Eighth.* Date of each dividend declared during said year ended with the first Monday of November.
- Ninth.* Rate per centum of each dividend declared.
- Tenth.* Amount of each dividend during the year ended with the first Monday in said month.
- Eleventh.* Gross earnings during the year.
- Twelfth.* Net earnings during said year.
- Thirteenth.* Amount of surplus.
- Fourteenth.* Amount of profit added to sinking fund during said year.
- Fifteenth.* Highest price of sales of stock between the first and fifteenth days of November aforesaid.
- Sixteenth.* Highest price of sales of stock during the year aforesaid.
- Seventeenth.* Average price of sales of stock during the year; . . .¹²

Blanks whereon to make the reports required by the foregoing provision are sent to the treasurers of corporations subject to the tax on or about the first of November in each year. For convenience's sake, different forms of these blanks are sent to different classes of corporations. The following forms are used:

1. Form for the use of transportation, transmission and electric light companies.
2. Form for the use of mining, quarrying, coal and coke companies.
3. Form for the use of brick, clay and stone companies.
4. Form for the use of land and improvement companies.
5. Form for the use of manufacturing corporations, limited partnership associations and joint stock associations.

¹²Sec. 4, Act of June 8, 1891, P. L. 229, amending § 20, Act of June 1, 1889, P. L. 420.

in form for the use of limited partnership and joint stock and tele-
 nics not organized for manufacturing.

For the use of domestic corporations not included total mile-
 Seing classes. the mileage

Thu for the use of foreign corporations. may be pro-

Fours above referred to call for the giving of much

Fifth that specified in the foregoing Act of 1901. If the said

Sixth. is required under the power vested in the stock association,

Seventh Act of March 30, 1811, and is necessary the auditor gen-

Eighth. he property, assets and franchises of comber in each and

with the fished from the value of their capital ss aforesaid, as re-

Ninth. R happens that the name of a com shall be the duty of

Tenth. Arve of the business in which it iath to add ten per

the first Mond sending it proper blanks, it mship, joint stock asso-

Eleventh. Gtion will receive capital stock year for which such

Twelfth. Net s use. Officers of corp furnished, which per-

Thirteenth. Am up their reports, mal with the said tax in the

Fourteenth. Am and, if not, apply d collecting such taxes; if

said year. of. This should rtnership, association, joint

Fifteenth. Highest pfacturing com any of them, shall intention-
 fifteenth days of Novemptions to ements of the twentieth section

Sixteenth. Highest pron propears, he or they shall be deemed
 aforesaid. be th on conviction thereof shall be

Seventeenth. Average pns. e hundred dollars and undergo an
 year; . . .¹² one year, or both or either, at the

Blanks whereon to make

provision are sent to the tæ above provision is taken with slight
 tax on or about the first Act of June 7, 1879, P. L. 112. In place
 venience's sake, differer however, the said section of the Act of
 ferent classes of corp following proviso:

1. Form for the d, that if the officers of any such corporation
 tric light compani intentionally fail to comply with the provisions

2. Form for section of this act for three successive years, the
 panies. eral shall report the fact to the governor, who, if he

3. Form if that such failure was intentional, shall thereupon

4. For amation declare the charter of said corporation or com-

5. forfeited, and its chartered privileges at an end, whereupon
 part same shall cease, end and be determined.

Similar acts provisions were continued in § 3 of the Revenue

¹²Sec. 22, Act of June 1, 1889, P. L. 420. See § 732.

Act of April 24, 1874, P. L. 68, and § 2 of the Revenue Act of March 20, 1877, P. L. 6. The governor issued a proclamation in 1883 declaring many corporations dissolved under the provisions of said acts, but many of them continued business without regard thereto, and it is doubtful if said provision is valid in law.

Where a corporation was informed by the auditor general that it was not taxable under the Act of April 29, 1874, and therefore made no reports for certain years and subsequently tax was settled for said years and the penalty of ten per centum of the amount of tax imposed by the Act of April 21, 1858, P. L. 419 was added, held, that said penalty had not been incurred.¹⁴

"The Commonwealth is only entitled to the percentage as a result of the negligence or disobedience of the company; but to hold the company liable not for their own default, but for the mistakes of the agents of the Commonwealth, is not to hold them so under the terms of the act but in disregard of them."¹⁵

The repeal of a tax act, which act provides, *inter alia*, for the imposition of a penalty for failure to make reports, by an act which reserved to the Commonwealth the right to collect "any tax" accrued under said act, but does not reserve the right to collect penalties so accrued, deprives the Commonwealth of the right to collect such penalties.¹⁶

The penalty may not be exacted on account of the making of an insufficient report. If the report when made does not contain all the information which the auditor general has the right to require, he is clothed by law with ample power to compel it to be furnished.¹⁷

Under the provisions of Clause 3, § 38 of the Act of April 29, 1874, P. L. 99, iron and steel companies neglecting or refusing to make reports for purposes of taxation to the auditor general are liable to a penalty of \$500 for the use of the Commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable.

§ 782. Officers of corporations to appraise stock—Accounting officers may make valuations if dissatisfied with appraisements and make estimated settlements when no

¹⁴Del. Div. Canal Co. v. Com., 50 Pa. 399 (1865).

¹⁵Del. Div. Canal Co. v. Com., 50 Pa. 399 (1865).

¹⁶Com. v. Standard Oil Co., 101 Pa. 119, 150 (1882). See § 719.

¹⁷Com. v. Western Union Tel. Co., 2 Dauph. Co. Rep. 30 (1884).

reports are made. . . . And in every case any two of the following named officers of such corporation, limited partnership, or joint stock association, namely: the president, chairman, secretary, and treasurer, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of their knowledge, and belief, shall, between the first and fifteenth days of November of each year, estimate and appraise the capital stock of the said company at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and not less than the price or value indicated or measured by net earnings or by the amount of profit made and either declared in dividends or carried into surplus or sinking fund, and when the same shall have been so truly estimated and appraised they shall forthwith forward to the auditor general a certificate thereof, accompanied with a copy of their said oath or affirmation, signed by them and attested by a magistrate or other person duly qualified to administer the same: Provided, that if the auditor general and state treasurer, or either of them, is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof, based upon the facts contained in the report herein required, or upon any information within their possession or that shall come into their possession, and to settle an account on the valuation so made by them for the taxes, penalties, and interest due the Commonwealth thereon, with right to the company dissatisfied with any settlement so made against it to appeal therefrom in the manner now provided by law; and in the event of the neglect or refusal of the officers of any corporation, company, joint stock association, or limited partnership, for a period of sixty days, to make the report and appraisement to the auditor general as herein provided, it shall be the duty of the auditor general and state treasurer to estimate a valuation of the capital stock of such defaulting corporation, company; joint stock association, or limited partnership, and settle an account for taxes, penalty, and interest thereon, from which settlement there shall be no right of appeal.¹⁸

§ 783. Assessment of capital stock for taxation—Basis of tax. The foregoing 4th section of the Act of June 8, 1891, P. L. 229, supra, § 782, provides that the officers of cor-

¹⁸Sec. 4, Act of June 8, 1891, P. L. 229.

porations subject to the tax shall appraise the capital stock of their companies, between the first and fifteenth days of November of each year "at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and not less than the price of value indicated or measured by net earnings, or by the amount of profits made and either declared in dividends or carried into surplus or sinking fund."

This, then, is the basis of taxation. The appraisement of the officers of the corporations is not at all binding upon the accounting officers, and if, in the opinion of such accounting officers, the amount of the appraisement is less than the valuation required as above, they raise the same to the proper amount, under the authority conferred by said act.¹⁹

The officers of the corporations, therefore, may be said to assess the stock, of their corporations, and the accounting officers to revise assessments.

The officers of corporations are required to appraise the stock of their corporations, between the first and fifteenth days of November in each year at its actual value, and in one case²⁰ the Supreme Court held that the actual value in cash of the stock was to be ascertained by the prices at which it sold between the first and fifteenth days of November, and not by the average sales during the year, such average sales being at a less price than the value between said days of November. In a later case, however, the court below having found that the selling prices between the first and fifteenth days of November were higher than the actual value in cash of said stock between said dates, it was held that the selling price during November was but one mode of ascertaining the value, and that the average price of stock during the year, being the true value, was the basis for taxation, although less than the price of stock in November.²¹

However this may be, the act requires the stock to be appraised at not less than the average price for which the stock

¹⁹Appraisements of capital stock by the officers of corporations are merely prima facie evidence of value and not conclusive upon the Commonwealth, independent of the power given the accounting officers to raise the same by

the Act of 1891. *Com. v. Erie R. Co.*, 2 Pears. 380 (1871).

²⁰*Pa. R. R. Co. v. Com.*, 94 Pa. 474 (1880).

²¹*Com. v. Phila. & R. R. Co.*, 145 Pa. 74 (1891).

sold during the year, so that, if that was higher than the value of the stock in November, the higher valuation must be taken.

The stock must, further, not be valued at less than its price or value as indicated by its net earnings, or amount of profit made, and either declared in dividends or carried into surplus or sinking fund. This provision establishes a minimum valuation below which the stock shall not be valued, notwithstanding the average price of sales during the year.

§ 784. Weight to be given to net earnings in arriving at taxable value of stock. What value is indicated by a given amount of net earnings or profits is a question incapable of a determination applicable to all cases. It was attempted by the accounting officers, after the passage of the Act of June 8, 1891, to lay down a general rule that a stock paying six per cent. was worth par, one paying twelve per cent. was worth twice par, and so on in the same proportion.

This practice was founded on the dividend basis of taxing capital stock, which had obtained under the former acts. Under the dividend-basis system, the capital stock of a corporation was taxed at one-half mill for each one per cent. of dividend paid or earned, where the dividends equalled or exceeded six per cent. Where the dividends were less than six per cent.; the tax was three mills upon the appraised value of the capital stock. One-half mill for each one per cent. of dividend was the same, where a company paid exactly six per cent. in dividends, as three mills on the appraised value of the stock. Hence it was assumed that the former acts had considered a stock paying 6 per cent. in dividends as worth par; and on this basis the practice above referred to was sought to be established.

The Supreme Court, however, held, that, in the absence of proof to the contrary, such an hypothesis might be resorted to, but that the true value of the stock of a corporation was a question of fact to be determined in each case, not only from the net earnings and profits, but from all other facts affecting the value of the stock.²²

In arriving at the net earnings of corporations, the amount of

²²Com. v. Edgerton Coal Co., 164 Pa. 284 (1894); Com. v. Sharon Coal Co., 164 Pa. 284 (1894); Com. v. Pgh. & Western Rwy. Co., 166 Pa. 453 (1895); Com. v. Del. Susq. & Sch. R. R. Co., 165 Pa. 44 (1894).

interest paid on bonded indebtedness is not allowed by the accounting officers as a deduction from the gross earnings.

"Net earnings" are the excess of the gross earnings over the expenditures incurred in producing them and the amount expended in necessary repairs deducted from the gross earnings. The amount expended in enlarging and extending works will not be permitted to be deducted. These are not expenses but investments of capital.²³

The words "net earnings" and "amount of net profit made" in § 4 of the Act of June 8, 1891, are identical in meaning. The correct construction of the clause in which they occur is, that so much of the income of a corporation, whether called net earnings or amount of profit made, as is either declared in dividends or carried into the surplus or sinking fund, is made the test of the minimum price or value of the capital stock, but where no part of such earnings or profit was declared in dividends or carried into surplus during a tax year, this test of minimum value does not apply.²⁴

The net earnings of a corporation for a given year, within the meaning of the tax laws, is the amount of the gross earnings less its current expenses for the year, which net income may not be reduced by deducting sums expended in enlarging the corporation works during said period. Money spent for repairs may be deducted, but not those expended for enlarging or extending the works. Where evidence does not show how much was expended for repairs and how much for construction, no deduction for repairs will be allowed.²⁵

Net earnings derived from the sale of property in which the capital stock of a company is invested will be considered in taxing the capital stock of the corporation.²⁶

Rentals paid for the use of rolling stock and equipment which is hired by a railway and not owned by it is a part of the operating expenses, and should be deducted from the gross earnings in order to ascertain the net earnings for purposes of taxation, and

²³Com. v. Minersville Water Co., 13 Pa. C. C. 17 (1893); 2 D. R. 738.

²⁴Com. v. Sharon Coal Co., Ltd., 164 Pa. 284 (1894), op. of lower court; Com. v. Del. Susq. & Sch. R. R. Co., 165 Pa. 44 (1895).

²⁵Com. v. Minersville Water Co., 13 Pa. C. C. 17 (1893); 2 D. R. 738.

²⁶Com. v. Western Land & Impt. Co., 156 Pa. 455 (1893). See Com. v. Matson's Ford Bridge Co., 20 W. N. C. 516 (1887).

the fact that the lessor and lessee regulated the latter by an annual percentage on the cost of the rolling stock and equipment is immaterial.²⁷

"As a general proposition the net earnings of a railroad are the excess of the gross earnings over its expenditures defrayed in producing them, aside from and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves."²⁸

§ 785. Weight to be given to prices at which shares sell. "While the price at which shares sell in the public market is not conclusive, and we would not feel ourselves bound by it where we were satisfied that all the relevant evidence in the case leads to the conclusion that it did not indicate the real value, we nevertheless feel that it is ordinarily entitled to careful consideration as an expression of the opinion of those presumably best acquainted with the actual financial status."²⁹

"The aggregate market value for which the stocks will sell in the market does not necessarily indicate the actual value or the amount of property which a corporation may own . . . It may fall very short of it. Valuation includes, besides the value of the property, profits, and prospects, nature and extent of rights, and privileges and enjoyments."³⁰

"A review of the facts shows that this appraisalment is much in excess of the actual value of the capital and surplus of defendant, as shown on its books, and that a large item must be credited to the value of the defendant's franchise and its capacity to earn dividends. This illustrates what has been said in the case of *Com. v. D., S. & S. R. R. Co.*, as to the principles on which the actual value in cash . . . is to be ascertained, and the elements which enter into the calculation, and demonstrates that the franchise . . . the right to carry on business, the privileges and immunities of the corporation, may be and frequently are of great value, and are properly subject to taxation."³¹

²⁷*Com. v. Phila. & Erie R. R. Co.*, 164 Pa. 252 (1894).

²⁸*Anderson's Dictionary of Law*, p. 390, cited with approval in *Com. v. P. & E. R. R. Co.*, *supra*.

²⁹*Com. v. Philadelphia Co.*, 164 Pa. 284 (1894), *op. lower court*.

³⁰*Com. v. Del., Susq. & S. R. R. Co.*, 165 Pa. 44 (1894).

³¹*Com. v. Provident L. & T. Co.*, 164 Pa. 284 (1894), *op. lower court*.

A proper method of ascertaining the average price which stock sold for during the year is to multiply the number of shares sold at each sale by the price paid per share, adding together the amounts paid at all the sales, and dividing this sum by the number of shares sold.³²

§ 786. Other matters to be considered in the assessment of stock. "The actual value in cash' is a question of fact which must be determined by considering the value of the tangible property, the amount of its business, the rate of dividends declared, and the extent and value of its good will, franchises, and privileges, as indicated by the evidence bearing upon those subjects at that particular time."³³

"The capital stock represents the franchises as well as the property of the company. In the sixth preamble of the act (of 1891) there appears a plain legislative purpose to include the franchise in fixing the value of the stock, and this is in harmony with the title and the provisions in respect to the taxation of it."³⁴

Where, owing to some extraordinary circumstances, such as losses by fire, the capital stock is worth less than its net earnings or profits would indicate, the stock should be appraised in accordance with the foregoing instructions, and the discrepancy between the appraised value and that indicated by the net earnings or profits should be explained in a sworn statement, made a part of the report.

In appraising capital stock the amount of the indebtedness of a corporation may not be deducted from the value of the stock.³⁵

The fact that the corpus of the property of corporations is being exhausted by their operations will be considered in arriving at the taxable value of their capital stock,³⁶ and the fact that a mining lease owned by a corporation will shortly expire is also to be taken into consideration.³⁷

³²Com. v. People's Traction Co., 183 Pa. 405 (1898).

³³Com. v. John W. Haney Co., Lim., 1 Dau. Co. Rep. 184 (1895).

³⁴Com. v. Del., Susq. & S. R. R. Co., 165 Pa. 44 (1894).

³⁵Com. v. N. Y., P. & O. R. R. Co., 188 Pa. 169 (1898).

³⁶Com. v. Philadelphia Co., 3 Dauph. Co. Rep. 259 (1894); Com. v. Fall Brook R. R. Co., 188 Pa. 199 (1898).

³⁷Com. v. West End Coal Co., 182 Pa. 353 (1897).

A corporation owning mining leases earned over ten per cent. during the tax year of 1895, during which time there were no sales of stock. It owned no land and some of the leases were to expire on June 30, 1897, and there was some uncertainty as to the possibility of making renewals, which was considered in making the settlement. It did not appear that the failure to secure such renewals would necessarily end the business operations of the company. The accounting officers settled tax on five-sixths of the par value of the stock. Held, that a proper allowance had been made for the possible failure to renew the leases and that the assessment should be sustained.³⁸

In determining the actual value of the capital stock of a corporation for purposes of taxation for state purposes, it is error to exclude every other consideration except the assessed valuation of the company's real and personal property for local taxation. Such assessed valuation should be given consideration, but only in connection with other relevant facts.³⁹

Where there are no sales of stock of a solvent corporation during a tax year, the court, on appeal from a tax settlement, must determine the actual value of the capital stock from the report of the company and other documentary, as well as oral, evidence.⁴⁰

When a railroad company is formed by the consolidation of Pennsylvania and New York corporations, it is taxable in Pennsylvania on its capital stock in the proportion of the mileage in Pennsylvania to the mileage in New York, and this is the case, though the Commonwealth on the returns for the three previous years had settled tax on a different basis.⁴¹

Under the Act of June 1, 1891, P. L. 229, the question of the actual value in cash of the capital stock of a corporation is a question of fact, which must be determined by considering the value of defendant's tangible property and assets of every description, including its bonds, mortgages and moneys at interest and its franchises and privileges; and the amount of incumbrances on its property and franchise is also a relevant fact to be

³⁸Com. v. West End Coal Co.,
182 Pa. 353 (1897).

³⁹Com. v. Manor Gas Coal Co.,
188 Pa. 195 (1898).

⁴⁰Com. v. Fall Brook Rwy. Co.,
188 Pa. 199 (1898).

⁴¹Com. v. Fall Brook Rwy. Co.,
188 Pa. 199 (1898).

considered, but it is not to be specifically deducted from the valuation so ascertained and determined.⁴²

As the actual value of the capital stock is a pure question of fact, an insolvent corporation has no standing to complain of discrimination in the methods of appraisal as between itself and a solvent company, so long as its stock is not assessed in excess of its actual value.⁴³

In ascertaining the value of capital stock the value of the franchises, privileges and assets must be considered not only in connection with the past, but also in connection with the probable future prosperity of the company. Thus, the probable speedy exhaustion of coal fields in a region served by a railroad company is an element to be considered in determining the value of the railroad company's capital stock.⁴⁴

While dividends are no longer the only measure of the amount of tax to be assessed, they are still a binding declaration of the company that so much money has been divided as profit, and not as a payment of salaries or upon any other account, and the tax to be assessed on the basis indicated by a declared dividend, cannot be changed by the reduction of the amount of the dividend, by increasing the salaries of the officers of the company.⁴⁵ Shares of stock distributed to stockholders during a tax year, at less than their actual value in cash, must be appraised at their actual value, and not at the price at which they were distributed.⁴⁶

Where there have been no sales, during a tax year, of shares of stock upon which only a part of the par value has been paid, and there is no evidence as to their value, it is proper to appraise them at the amount paid in.⁴⁷

§ 786a. Tax must be settled on a uniform basis.

"The rule of ascertaining the value of the property must be the same; the actual cash value of one capital stock of the same class cannot be ascertained from net earnings, another from profit, another from surplus and another from dividends, for each method will produce a different valuation and result in inequality, but each may be

⁴²Com. v. N. Y., P. & O. R. R. Co., 188 Pa. 169 (1898).

⁴³Com. v. N. Y., P. & O. R. R. Co., 188 Pa. 169 (1898).

⁴⁴Com. v. Fall Brook Rwy. Co., 188 Pa. 199 (1898).

⁴⁵Com. v. John W. Haney Co., Lim., 1 Dau. Co. Rep. 184 (1895).

⁴⁶Com. v. People's Traction Co. of Phila., 183 Pa. 404 (1898).

⁴⁷Com. v. People's Traction Co. of Phila., 183 Pa. 405 (1898).

taxed on the actual cash valuation from any relative evidence tending to establish the fact."⁴⁸

"The Commonwealth's officers cannot arrive at the actual value of the capital stock under the Act of June 8, 1891, P. L. 229, of one corporation by considering the value of its tangible property and assets, when they do not apply the same principles in appraising the capital stock of other like corporations for the same years, without violating the mandates of Article IX, § 1, of the Constitution of Pennsylvania, which requires that taxes shall be uniform upon the same class of subjects."⁴⁹

"Where an appraisement and settlement for taxes against one corporation under the Act of June 8, 1891, P. L. 229, is not uniform with the appraisement and settlement against other like corporations, and does not produce uniformity of taxes among such like corporations for the same tax year, it is illegal and void."⁵⁰

§ 787. Distinction between capital stock and shares of stock—Exemption of shares of stock of corporations paying a capital stock tax.^{50a} The 32nd section of the Act of April 29, 1844, P. L. 497, made taxable for state and county purposes "all shares of stock in any bank, institution and company, now or hereafter incorporated by or under the provisions of any law of this Commonwealth, or of any other state or government," in the hands of the holders thereof.

The 33rd section of the same act imposed a tax upon the capital stock of banks, institutions and companies.

The capital stock of corporations and the shares of stock therein were thus considered to be separate subjects of taxation and continued to be separately taxed until the passage of the Act of January 3, 1868, P. L. 1318, which is as follows:

From and after the passage of this act the shares of stock held by any stockholder in any institution or company incorporated under the laws of this state, which in its corporate capacity is liable to and pays into the state treasury the tax on capital stock imposed by the act, approved April 12th, Anno Domini one thou-

⁴⁸Com. v. Sharon Coal Co., 164 Pa. 304 (1894).

⁴⁹Com. v. Mammoth Vien Coal & Iron Co., 11 D. R. 328 (1902).

⁵⁰Com. v. Lake Shore & M. S. R. R. Co., 11 D. R. 318 (1900). See Com. v. Provident Life & Trust Co., 12 Dauph. Co. Rep.

104 (1909); Com. v. Jamestown & Franklin R. R. Co., 3 Dauph Co. Rep. 214 (1900); Rockhill Iron & Coal Co. v. Fulton County, 204 Pa. 44 (1902); Provident Life and Trust Co. v. Board of Revision of Taxes, 12 D. R. 613 (1903).

^{50a}See § 911.

sand eight hundred and fifty-nine, entitled "An act to equalize taxation upon corporations," shall not be taxable in the hands of said stockholder personally for state, county or local purposes; and so much of the thirty-second section of the act approved April twenty-nine, Anno Domini one thousand eight hundred and forty-four, entitled "An act to reduce the state debt and incorporate the Pennsylvania Canal and Railroad Company," as imposes a tax for state or county purposes upon any stockholder in his individual capacity as aforesaid is hereby repealed: Provided, that this act shall not be construed to relieve said corporations from any tax now imposed by law, or the real estate belonging to said corporations from the state, county or local tax to which they are now or may hereafter be subject.

The proviso to the foregoing act which forbids any construction of the act which shall extend the relief given to shareholders, to the corporation as such, does not disclose a legislative intent to impose double taxation upon the shares of stock of the corporation.⁵¹

The capital stock represents the entire property, assets, earning capacity and franchises of a corporation, as we have seen above, while the shares of stock are merely evidences of the interests which the individual shareholders have in such property and assets and the enjoyment of the franchises.⁵²

The tax which we are considering being upon the capital stock and not upon the shares, it follows that it is immaterial when the certificates of stock are issued, or whether they are ever issued. The capital stock is taxable without regard thereto.

Inasmuch as most classes of corporations are required to pay in ten per cent. of their capital stock before letters patent issue to them, it is evident that as soon as they are incorporated their capital stock has some taxable value.

§ 788. Apportionment of tax. When a corporation is incorporated during a tax year, tax is settled upon its capital stock in the same proportion of the tax for the entire year which the number of days during which it has been in existence during the tax year bears to the whole number of days in such year. Thus,

⁵¹Com. v. Lehigh Coal & Navigation Co., 162 Pa. 602 (1894).

⁵²Com. v. Standard Oil Co., 101 Pa. 119 (1882); Bidwell v. Pgh.,

O. & E. L. Pass. Ry. Co., 114 Pa. 535 (1886); Lycoming County v. Gamble, 47 Pa. 106 (1864).

if a corporation has been in existence during six months of the tax year, its tax will be but one-half of what it would have been had it been in existence during the entire year.⁵³

So, also, if the capital stock of a corporation has been increased within the tax year, the tax on the increase of capital stock will be apportioned with a regard to the length of time the increase has been in existence.⁵⁴

When the rate of tax is changed during a tax year, a company will be taxable at the old rate until the new rate goes into effect, and at the new rate for the balance of the tax year;⁵⁵ and where corporations are relieved from taxation by an act passed during the currency of the tax year, such corporations will be taxable from the beginning of the tax year to the date of the passage of the new act.⁵⁶

§ 789. **Settlement of tax.** On the receipt of the capital stock reports by the auditor general, they are filed as of the date of their receipt, and are then taken up in order, and settlements for the tax are made thereon by the auditor general. The settlements and reports are then sent to the treasury department, where the settlements are approved by the state treasurer. The papers are thereupon returned to the auditor general, who has a copy of each settlement made, and certified under his hand and seal, which copy is then mailed to the treasurer of the company against which the settlement was made, which company then has sixty days, as we have already seen, from notice of the settlement (i. e., from the receipt of the copy), within which either to pay the tax, or, if dissatisfied with the settlement, to take an appeal to the Court of Common Pleas of Dauphin County. At the expiration of the said sixty days the settlement becomes final, and is conclusive against the company. The tax bears interest at 12 per cent. per annum from sixty days after date of settlement.

Where corporations are dissatisfied with the settlements made

⁵³Com. v. Wyoming Valley Canal Co., 50 Pa. 410 (1865).

⁵⁴Com. v. American Machine Co., 2 Dauph. Co. Rep. 27 (1899); Com. v. People's Traction Co., 183 Pa. 405 (1898); Com. v. Union Traction Company of Phila., 1 Dauph. Co. Rep. 178 (1898).

⁵⁵Ebervale Coal Co. v. Com., 91 Pa. 47 (1879).

⁵⁶Com. v. Atlantic Refining Co., 2 Pa. C. C. 62 (1886); Com. v. J. B. Lippincott Co., 7 Dauph. Co. Rep. 193 (1887); Com. v. Mortgage Trust Company of Penna., 224 Pa. — (1909).

against them, or do not understand the basis upon which they are made, they should at once inquire of the auditor general the manner in which the amount of the tax was arrived at, so that if there is any error in their report, or if any part thereof has been misunderstood, they may file an affidavit making the necessary correction or explanation, with a request for a resettlement of the account. This often saves the expense of taking an appeal, and avoids the annoyance caused by permitting settlements to stand undisputed until they are of more than a year's standing, when only the Board of Public Accounts can resettle them.

§ 790. Only so much capital stock taxable as is invested in Pennsylvania or in personal property having its situs for taxation within the state.⁵⁷ While the various acts imposing the tax upon capital stock have uniformly provided that the whole capital stock⁵⁸ of corporations shall be taxed, corporations are, in fact, taxable upon so much of their capital stock only as is invested within the Commonwealth, or in personal property which has its situs for taxation in Pennsylvania. This necessarily follows from the fact that the tax is on property, and not a franchise tax.⁵⁹

"Regarding the words 'capital stock' in the act of assembly as the equivalent of the property and assets of the corporation, we must construe them to mean so much of the capital stock measured by the property actually brought within the state by the company in the transaction of its business."⁶⁰

⁵⁷See § 791.

⁵⁸The word "whole" was used in the Act of June 8, 1891, P. L. 238, for the purpose of excluding all doubt about the liability to taxation of the various classes into which the stock might be divided, and with no reference to the character of the investments in which the capital might be employed. *Com. v. Lehigh Coal & Nav. Co.*, 162 Pa. 603 (1894).

⁵⁹*Com. v. Standard Oil Co.*, 101 Pa. 119 (1882); *Com. v. Del., L. & W. R. R. Co.*, 145 Pa. 96 (1891); *Com. v. Penna. Co.*, 145 Pa. 266 (1891); *Com. v. Pitts-*

burgh & C. R. R. Co., 2 Pears. 389; *Pittsburgh, Ft. W. & C. R. R. Co. v. Com.*, 66 Pa. 73 (1870); *Com. v. Cleveland, P. & A. R. R. Co.*, 29 Pa. 370 (1857); *Buffalo & Erie R. R. Co. v. Com.*, 3 Brewster 374; *Com. v. Erie R. R. Co.*, 11 W. N. C. 89 (1881); *Com. v. National Transit Co.*, 5 Pa. C. C. 90 (1884), note; *Com. v. Montgomery Lead & Z. Mining Co.*, 5 Pa. C. C. 89 (1888); *Com. v. Penna. Coal Co.*, 41 Leg. Int. 125 (1884); 17 Phila. 595; 5 Pa. C. C. 89, note.

⁶⁰*Com. v. Standard Oil Co.*, 101 Pa. 119 (1882).

"It cannot be pretended that a state can by law impose a tax upon that which is entirely beyond its jurisdiction, or on property to which its laws afford no protection. The custom to assess pro rata has received the sanction of the court in several cases when applied to the stock of corporations."⁶¹

Capital stock invested in tangible personal property located without the state is not taxable,⁶² and where all the capital of a corporation is so invested, the corporation is not taxable,⁶³ but where such property is located only temporarily without the state the capital stock invested therein is taxable.⁶⁴

Hence the capital stock of a domestic corporation, invested in coal shipped by it to another state for the purpose of sale, and not to serve any permanent corporate purpose, is taxable,⁶⁵ although taxes were assessed and paid upon the coal in the state wherein it was sold, it appearing that the payment of taxes thereon had not been contested, and it not appearing whether the taxes were for state, local or municipal purposes.⁶⁶

Capital represented by unpaid purchase money on lands in other states, sold by corporations, which money is secured by mortgages, is taxable.⁶⁷

The amount of deductions to which corporations are entitled, through a portion of their capital being invested without the state, is usually specifically subtracted by the accounting officers from the amounts upon which corporations would otherwise be taxable, respectively, but in the case of railroad, telegraph, telephone and palace car companies, doing business in other states as well as in Pennsylvania, the amount so invested is not specifically deducted, but the capital upon which said corporations are taxable in Pennsylvania, respectively, is arrived at in the manner set forth in the following section.

⁶¹Pittsburgh, Ft. W. & C. Ry. Co. v. Com., 66 Pa. 73 (1870).

⁶²Com. v. Del. L. & W. R. R. Co., 145 Pa. 96 (1891); Com. v. Penna. Coal Co., 41 Leg. Int. 125; Com. v. Montg. Lead & Zinc M. Co., 5 Pa. C. C. 89 (1888); Com. v. American Dredging Co., 122 Pa. 386 (1888); Com. v. Standard Oil Co., 101 Pa. 119 (1882).

⁶³Com. v. Montg. Lead & Zinc Mining Co., 5 Pa. C. C. 89 (1888).

⁶⁴Com. v. American Dredging Co., 122 Pa. 386 (1888); Pullman's Palace Car Co. v. Com., 107 Pa. 156 (1884); 141 U. S. 18.

⁶⁵Com. v. Penna. Coal Co., 197 Pa. 551 (1901).

⁶⁶Com. v. Lehigh Coal & Nav. Co., 206 Pa. 641 (1903).

⁶⁷Com. v. Penna. Coal Co., 197 Pa. 551 (1901); Com. v. Penna. Coal Co., 4 Dauph. Co. Rep. 121 (1901).

§ 791. **Taxation of railroad, telegraph and telephone companies operating partly in other states—Palace car companies.** It being practically impossible, in the case of railroad, telegraph and telephone companies whose lines extend into other states, to ascertain the exact value of the property thereof within and that without the state, the practice has been approved by the courts of taxing that proportion of the otherwise taxable capital stock, which the total mileage of such companies in Pennsylvania bears to their entire mileage, using for this purpose, in the case of railroads, the mileage of main track only.⁶⁸

A similar method is resorted to in the taxation of palace car companies.

"The mode which the state of Pennsylvania adopted to ascertain the proportion of the company's property upon which it should be taxed in that state was, by taking as a basis of assessment such proportion of the capital stock of the company as the number of miles over which it ran cars within the state bore to the whole number of miles in that and other states over which its cars were run. This was a just and equitable method of assessment; and, if it were adopted by all the states through which these cars run, the company would be assessed upon the whole value of its capital stock and no more."

Foreign or domestic telegraph companies, which do business in many states, and whose facilities for doing business in one state increase the same in another, are to be taxed, where the relative value of the tangible property representing capital within and without the state cannot be accurately ascertained, on the proportion of their entire capital stock which the length of their lines within the state bears to the total length of all their lines, but leased lines should not be included in the calculation.⁷⁰

In the first case above cited, it appeared, as a matter of fact, that the cost of constructing a mile of telegraph line, with poles and one wire, was equal to the cost of six additional wires upon

⁶⁸Com. v. Erie R. R. Co., 98 Pa. 127 (1881); Com. v. Del. L. & W. R. R. Co., 145 Pa. 90 (1894); Com. v. Western Union Tel. Co., 15 W. N. C. 331 (1884); Pgh., Ft. W. & Chic. Ry. Co. v. Com., 66 Pa. 73 (1870); Com. v. Fall Brook Ry. Co., 188 Pa. 199 (1898).

⁶⁹Pullman's Palace Car Co. v. Penna., 141 U. S. 18 (1891); Com. v. Pullman's P. C. Co., 13 Pa. C. 54 (1893).

⁷⁰Com. v. Western Union Tel. Co., 15 W. N. C. 331 (1884); Com. v. Western Union Tel. Co., 2 Dau. Co. Rep. 40 (1888); Western Union Teleg. Co.'s Appeal, 17 Phila. 602 (1884).

the same poles. In settling tax on capital stock against telegraph companies, the accounting officers generally use this ratio in making their calculations, unless a different ratio of cost is known to exist in any particular case.

When the above method of apportionment is resorted to, no deduction is specifically allowed, of course, on account of capital invested in property without the state, or on account of stocks and bonds owned by foreign corporations, such apportionment taking the place of such deductions.⁷¹ In one case, however, the value of real estate located without the state, and not constituting part of defendant's road, was deducted before the mileage proportion was applied.⁷²

§ 792. Taxation of bridge and ferry companies operating between states. Bridge companies connecting this with another state are taxable in Pennsylvania upon only one-half of their capital stock.⁷³

A ferry company incorporated in New Jersey and plying between that state and Pennsylvania, holding its corporate meetings in New Jersey and having no property in Pennsylvania, but the lease of a dock which it used in landing and embarking passengers, was held not to be doing business in Pennsylvania within the meaning of the Revenue Act of 1879 so as to make its entire capital stock taxable in Pennsylvania. It seems, however, that so much of said capital stock as represents the value of the lease is taxable.⁷⁴

§ 793. Taxation of foreign corporations.⁷⁵ Foreign corporations are taxed in the same manner and at the same rate as domestic corporations, that is, they are taxable on so much of their capital stock as is invested within the Commonwealth.⁷⁶ But foreign corporations which maintain offices in Pennsylvania merely for the purpose of making stock transfers, and which keep deposits in banks within the state, but carry on their corporate

"Com. v. Western Union Tel. Co., 2 Dau. Co. Rep. 40 (1888).

"Com. v. Lake Shore & M. S. R. R. Co., 11 D. R. 318 (1900).

"Easton Bridge Co. v. Northampton County, 9 Pa. 415 (1848); Com. v. Trenton Bridge, 9 Amer. Law Reg. (O. S.) 298.

"Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196 (1884); reversing Com. v. Gloucester Ferry Co., 10 W. N. C. 509 (1881).

"See §§ 810, 792, 791.

"Com. v. Adams Express Co., 4 D. R. 139 (1895); Com. v. Earn Line S. S. Co., 12 D. R. 368 (1903).

business wholly within another state, do not do business or employ capital in Pennsylvania within the meaning of the acts imposing a tax upon capital stock, and are not taxable upon so much of their capital as is represented by the amount of said deposits.^{76a}

Foreign corporations are not taxable upon so much of their capital stock as is invested in the shares of domestic corporations, or interests in domestic limited partnership associations, such shares and interests being personal property having their situs for taxation at the domiciles of the foreign corporations holding them,^{76b} but they are taxable on capital invested in individual partnerships doing business within the Commonwealth.⁷⁷

The purchase within the state by a foreign corporation of crude petroleum which it ships to its refineries in other states does not subject such corporation to the payment of tax on its capital stock.⁷⁸

§ 794. When liability to tax begins. The tax on capital stock being a tax on the property, assets and franchises of a corporation, it follows that corporations must, in the case of domestic companies, make reports and pay tax from the date of their incorporation, and not from the date of actually beginning business nor from the date of issuing certificates of stock, and, in the case of foreign corporations, from the date of the investment of capital in Pennsylvania.

§ 795. When capital stock has no value. Corporations must make annual reports of capital stock whether their stock has any actual value or not, precisely as if the stock had value. It may be that the accounting officers will not agree that the stock is worthless, and if they do so agree, it is as necessary that their records should show why a company is not taxed for a given year as that it should appear from such records why it is taxed for another year.

^{76a}Com. v. Tonopah Mining Co. of Nevada, 12 Dau. Co. Rep. 95 (1909).

^{76b}Com. v. Standard Oil Co., 101 Pa. 119 (1882); Com. v. American Bell Telephone Co., 129 Pa. 217 (1889); Com. v. American Water Wks. & G. Co., 2 Dau.

Co. Rep. 212 (1899); 8 D. R. 268; Com. v. Earn Ling S. S. Co., 12 D. R. 363 (1903).

⁷⁷Com. v. Standard Oil Co., 101 Pa. 119 (1882).

⁷⁸Com. v. Standard Oil Co., 101 Pa. 119 (1882).

§ 796. Allowance of deductions on account of payments of tax on corporate loans. It having been held in numerous cases⁷⁹ that the indebtedness of corporations may not be deducted from the value of their property and assets in arriving at the taxable value of their capital stock, it follows that to thus tax their entire capital stock and at the same time tax the holders of their certificates of indebtedness would be to impose double taxation, inasmuch as the obligations of a company represent money which has entered into the value of its plant, which is represented by the capital stock which has already been taxed. As elsewhere pointed out,⁸⁰ double taxation is permissible, and the separate taxation of the capital stock and the bonded indebtedness of corporations is similar to the taxation both of lands and the mortgages upon them. However, in order to effect an equitable settlement of taxes, the accounting officers sometimes deduct from the value upon which the capital stock would otherwise be taxable an amount equal to what the tax on corporate loans collected and paid by the corporation would amount to when capitalized at five mills. Thus, if a corporation, the capital stock of which would otherwise be taxed at a valuation of a million dollars pays \$400 tax on corporate loans, a deduction of \$80,000 would be permitted and the company be taxed on a valuation of \$920,000. Inasmuch as deductions are allowed only on account of tax actually paid on loans, the investments of foreign bondholders of corporations, which may not be taxed to them directly, is reached through the stock.

§ 797. Exemption of corporations paying a capital stock tax from further taxation on the bonds, mortgages, etc., held by them in their own right. . . . Provided, also, that corporations, limited partnerships and joint stock associations liable to tax on capital stock under this section shall not be required to pay any further tax on the mortgages, bonds and other securities owned by them and in which the whole body of stockholders, or members as such, have the entire equi-

⁷⁹Com. v. N. Y., P. & O. R. R. Co., 188 Pa. 169 (1898); Com. v. Pine Creek R. R. Co., 188 Pa. 198 (1898); Com. v. Fall Brook Railroad Co., 188 Pa. 199 (1898);

Com. v. Beech Creek R. R. Co., 188 Pa. 203 (1898); Com. v. Ontario, C. & S. R. Co., 188 Pa. 205 (1898).

⁸⁰Sec. 32.

table interest in remainder; but corporations, limited partnerships and joint stock associations owning or holding such securities as trustees, executors, administrators, guardians, or in any other manner than for the whole body of stockholders, or members thereof, as sole equitable owners in remainder, shall return and pay the tax imposed by this act upon all securities so owned or held by them, as in the case of individuals. . . .⁸¹

The 17th section of the Act of June 7, 1879, P. L. 112, re-enacted as §.1, of the Act of June 30, 1885, P. L. 193, provided for the taxation of judgments, mortgages, etc., "owned or possessed by any person or persons whatever" and this language was held to not to apply to corporations.⁸² The first section of the Act of June 1, 1889, P. L. 420, however, made such obligations taxable whether held by individuals or corporations, and hence the foregoing provision was inserted in the 21st section of said act to prevent double taxation by taxing the capital stock of corporations invested in mortgages, etc., and the obligations themselves separately.⁸³

Bonds, mortgages, etc., held by a trust and insurance company as part of its fund for the payment of losses incurred in the transaction of its insurance business were held not to be held in trust within the meaning of § 1 of the Act of June 8, 1893, P. L. 353, and hence to be exempt from taxation under said provision;⁸⁴ but such obligations so held would seem to be now taxable under the Act of June 7, 1907, P. L. 430, *supra*.

It was held in one case⁸⁵ that where, notwithstanding the foregoing provision, a corporation had returned to the local assessor bonds, mortgages, etc., owned by it for the payment of the state tax on personal property and paid tax thereon; it was thus discharged from the payment of tax on so much of its capital

⁸¹Sec. 1, Act of June 7, 1907, P. L. 430, amending § 1, Act of June 8, 1893, P. L. 353, which amended § 5, Act of June 8, 1891, P. L. 229; which amended § 21, of the Act of June 1, 1889, P. L. 420.

⁸²*Fox's Appeal*, 112 Pa. 336, 354 (1886); *Loughlin's Appeal*, 19 W. N. C. 517 (1887); *Guarantee Trust Co. v. Loughlin*, 17 Phila. 123 (1884).

⁸³*Fidelity Ins. Co. v. T. & S. D. Co.* v. *Loughlin*, 139 Pa. 612 (1891).

⁸⁴*Provident Life & Trust Co. v. Board of Revision of Taxes*, 12 D. R. 613 (1903); 29 Pa. C. C. 434; *Com. v. Provident Life & Trust Co.*, 9 D. R. 479 (1900).

⁸⁵*Com. v. I. P. Morris Company*, 8 Dauph. Co. Rep. 270 (1894).

stock as represented said obligations, on the ground that the tax paid thereon ultimately reached the state treasury.

In view, however, of the fact that the tax on capital stock is at the rate of five mills while the tax on personal property but is at the rate of four mills, and that, of the tax on personal property, three-fourths thereof is returned to the counties, so that in the case referred to the Commonwealth would have actually received only one mill on the value of the obligations instead of five mills on the capital stock representing the same, it would seem doubtful if such decision will be followed in the future.

§ 798. Other exemptions to which corporations paying a capital stock tax are entitled. As has been heretofore pointed out corporations, joint stock associations and limited partnership associations are exempt from taxation on so much of their capital stock as is invested in tangible property permanently located outside of the Commonwealth,⁸⁶ and from further taxation on the bonds, mortgages, etc., held by them in their own right for the exclusive benefit of their stockholders.⁸⁷

The shares of stock of all corporations and limited partnership associations paying a capital stock tax, or exempted from the payment of capital stock as manufacturing corporations, are exempt from taxation in the hands of the holders thereof, whether such holders are individuals, corporations or joint stock or limited partnership associations, and hence such corporations and associations are not taxable on so much of their capital stock as is invested in the shares of such other corporations paying a capital stock tax or exempted from the payment thereof as manufacturing corporations,⁸⁸ nor on capital invested in trust certificates issued in exchange for shares of capital stock of a domestic corporation paying a capital stock tax, deposited with a trust company.⁸⁹

Whether corporations paying a capital stock tax are entitled to exemption from tax upon so much of their capital as is invested

⁸⁶See § 790.

⁸⁷See § 797.

⁸⁸See § 911. *Com. v. Fall Brook Coal Co.*, 156 Pa. 488 (1893); *Com. v. United Gas Imp. Co.*, 162 Pa. 602 (1894); *Com. v. Lehigh Coal & Nav. Co.*, 162 Pa. 603 (1894). These cases over-

rule *Com. v. Westinghouse Air Brake Co.*, 151 Pa. 276 (1892) and *Com. v. Westinghouse Elec. & Mfg. Co.*, 151 Pa. 265 (1892).

⁸⁹*Com. v. Croft & Allen Co.*, 26 Pa. C. C. 474 (1902); 11 D. R. 473.

in the shares of banks and savings institution, which shares have already been once taxed to them, under the provisions of the Act of July 15, 1897, P. L. 292, has never been decided though a case involving this question⁹⁰ has been pending in the court of common pleas of Dauphin county for a long time.

Capital stock of corporations invested in the shares of stock of foreign corporations having no capital invested in Pennsylvania nor doing business therein, is taxable,⁹¹ but the exemption of shares of stock of corporations paying a capital stock tax, or exempted from the payment thereof as manufacturing companies, from the classes of personal property made subject to the tax on personal property, by § 1 of the Act of June 8, 1891, P. L. 229,⁹² is not confined to the shares of domestic corporations. It would seem, therefore, that where a foreign corporation has all its capital stock invested in Pennsylvania, and either pays a capital stock tax thereon, or, as a manufacturing corporation, is exempted from the payment of said tax, the capital stock of other corporations invested in such shares is not taxable, although this has never been precisely decided.⁹³

Suppose, however, that a foreign corporation has but part of its capital invested in Pennsylvania, and therefore pays a capital stock tax, or, as a manufacturing company, is exempted from the payment of the same, on but a part of its capital, while all its shares of stock are held within the state by residents or domestic corporations. In such a case, the reason for exempting the shares of stock or capital invested therein from taxation, i. e., that the capital represented thereby has been taxed as a whole to the corporation, fails, except as to so much of the shares and capital invested therein as represents the capital stock on which the corporation has actually paid a capital stock tax, or been exempted, as a manufacturing company, from the payment of tax. Hence it would seem that the proper method would be to exempt

⁹⁰Com. v. Hazlewood Savings & Trust Co., No. Comth Dock't 1908, Dau. Co. C. P.

⁹¹Com. v. Cambria Iron Co., 5 Dau. Co. Rep. 101 (1902); Com. v. Westinghouse Air Brake Co., 151 Pa. 276 (1892); Com. v. Bethlehem Iron Co., 5 Dau. Co. Rep. 118 (1902); McKean v. North-

ampton County, 49 Pa. 519 (1865); Whitesell v. Northampton Co., 49 Pa. 526 (1865).

⁹²See § 911.

⁹³Com. v. Fall Brook Coal Co., 156 Pa. 488 (1893); Com. v. Provident Life & T. Co., 9 D. R. 479 (1900).

from taxation only that proportion of the shares and capital invested therein, which the capital on which the company pays a capital stock tax, or from payment on which it is exempted as a manufacturing corporation, bears to the entire value of the capital stock.

The same holds true, as well, as to domestic corporations having a part of their capital stock invested without the state, and it would seem that the same method should be adopted in allowing deductions on account of capital invested in their shares.

§ 799. Capital stock invested in United States bonds.

The capital stock of corporations, etc., invested in United States bonds is not taxable,⁹⁴ but the shares of stock of banks are taxable, although the capital of the banks issuing the shares is wholly invested in said bonds.⁹⁵

§ 800. Capital stock invested in patent rights.

The capital stock of a corporation invested in patents or patent rights, or issued for patent rights merely, and not for tangible property or goods manufactured under such patent rights, is not taxable.⁹⁶

But capital stock issued by a corporation in consideration of the exclusive right to use a patented article within certain territory, the patentee retaining exclusive ownership of the patent and absolute control over the manufacture, use and disposition of the instruments used by the licensee, is not an investment in patent rights and is therefore taxable.⁹⁷

§ 801. The payment of capital stock tax does not relieve corporations from local taxation. The payment of the tax on capital stock does not relieve corporations from the pay-

⁹⁴Com. v. Lack, I. & C. Co., 129 Pa. 346 (1889); Com. v. Penna. Coal Co., 5 Pa. C. C. 90 (1884), note; Com. v. Provident Life & T. Co., 9 D. R. 479 (1900).

⁹⁵Van Allen v. Assessor, 3 Wall. 573; Bank of Louisville v. Com. of Kentucky, 9 Wall. 353.

⁹⁶Com. v. Philadelphia Company, 157 Pa. 527 (1893), distinguishing Com. v. Phila. Company, 145 Pa. 142 (1891); Com. v. Edison Elec. Light Co., 157

Pa. 529 (1893); Com. v. Westinghouse Elec. & Mfg. Co., 151 Pa. 265 (1892); Com. v. Westinghouse Air Brake Co., 151 Pa. 276 (1892); Com. v. Davis Colby Ore Roaster Co., 1 Dauph. Co. Rep. 118 (1892).

⁹⁷Com. v. Edison Elec. Light Co., 145 Pa. 131 (1891); Com. v. Central Dist. & P. Tel. Co., 145 Pa. 121 (1891); Com. v. Phila. Co., 145 Pa. 142 (1891); Com. v. Brush Elec. Lt. Co., 145 Pa. 147 (1891).

ment of any local taxation to which they are subject. The tax on capital stock being for state purposes only, the local taxation of the property in which the capital stock is invested does not constitute double taxation.⁹⁸

The exemption of manufacturing corporations from the payment of the tax on capital stock does not relieve them from taxation for county, township, borough, city, school and poor purposes.⁹⁹

The payment of the tax on capital stock does not relieve a corporation, otherwise subject to the same, from the payment of the mercantile license tax,¹⁰⁰ nor any other license tax to which it may be subject.

§ 802. Exemption of manufacturing companies—History. The proviso to § 6 of the Act of June 7, 1879, P. L. 112, provided that limited partnerships organized for manufacturing or mercantile purposes should be exempt from the tax on capital stock imposed by the act.

The 20th section of the Act of June 30, 1885, P. L. 193, provided as follows:

The tax laid upon manufacturing corporations by and under the revenue laws of this Commonwealth be and the same are hereby abolished as to such corporations and the laws, under which such taxes are laid and collected, be and the same are hereby repealed, so far, and so far only, as they apply to and affect manufacturing corporations: Provided, that the provisions of this act shall not apply to corporations engaged in the manufacture of malt, spirituous or vinous liquors or in the manufacture of gas: Provided, this act shall go into effect immediately, reserving and excepting unto the Commonwealth the right to collect any taxes accrued under the laws repealed by this act.

It was held that under the provisions of the foregoing section only so much of the capital stock of a manufacturing company was entitled to exemption from taxation as was employed in strictly manufacturing operations, as contradistinguished from capital embraced in mining operations or invested in city lots or

⁹⁸Com. v. Hillside Cemetery Co., 170 Pa. 227 (1895).

⁹⁹Hawes Mfg. Co.'s Appeal, 24 W. N. C. 302 (1889); 1 Mona. 353.

¹⁰⁰Com. v. Bailey, Banks & Bidle Co., 20 Pa. Super. Ct. 210 (1902).

bonds and mortgages,¹ or in dwelling houses built to be leased to its employees.²

The tax on corporate loans being a tax not upon corporations but upon the holders of the obligations thereof, the treasurers of manufacturing corporations were not relieved by the Act of 1885 from the duty of collecting the tax by deducting it from the interest paid on such obligations.

The 21st section of the Act of June 1, 1889, P. L. 420, superseding the 20th section of the Act of June 30, 1885, *supra*, provided, *inter alia*, as follows:

. . . And provided further, that the provisions of this section shall not apply to the taxation of the capital stock of corporations, limited partnership and joint stock associations *organized exclusively for manufacturing purposes*, and actually carrying on manufacturing within the state, except companies engaged in the brewing or distilling of spirits or malt liquors, and such as enjoy and exercise the right of eminent domain.

This provision made artificial gas companies entitled to exemption from taxation with other non-excepted manufacturing companies,³ and omitted from the excepted corporations those engaged in the manufacture of vinous liquors.

The above Act of 1889 exempted from taxation only such manufacturing corporations as were "organized *exclusively* for manufacturing purposes," and it was held in numerous cases that corporations incorporated with the right to carry on any other business than manufacturing, were not within the meaning of the exemption, although they did not, in fact, carry on such other business.⁴

A corporation incorporated for the purpose of carrying on an exclusively manufacturing business, however, was held to be exclusively manufacturing within the meaning of the act, not-

¹Com. v. Lackawanna Iron & Bridge Co., 156 Pa. 500 (1893); Coal Co., 129 Pa. 346 (1889).

²Com. v. Mahoning Rolling Mill Co., 129 Pa. 360 (1889).

³Com. v. Allegheny Gas Co., 500 (1893); Com. v. Cambria Iron Co., 5 Dauph. Co. Rep. 101 (1892); Com. v. Westinghouse Elec. Mfg. Co., 151 Pa. 265 (1892).

⁴Com. v. Thackera Mfg. Company, 156 Pa. 510 (1893); Com. v. J. B. Lippincott Co., 156 Pa. 513 (1893); Com. v. Keystone

withstanding that some of its capital was invested otherwise than in its manufacturing operations, which capital so invested was held to be taxable,⁵ and a company incorporated for the purpose of mining coal and manufacturing coke, which mined only the coal used by it in its manufacture of coke, was held to be exempt from taxation on the capital invested in such manufacture.⁶

Manufacturing corporations are now exempted from the payment of the tax on capital stock under the provisions of the following section, which exempts so much of their capital as is actually and exclusively invested in manufacturing within the state, whether they are organized exclusively for manufacturing or not.

§ 803. Exemption of manufacturing corporations from the payment of tax on capital stock. . . . And provided, further, that the provisions of this section shall not apply to the taxation of the capital stock of corporations, limited partnerships and joint stock associations organized for manufacturing purposes which is invested in and actually and exclusively employed in carrying on manufacturing within the state, except companies engaged in the brewing or distilling of spirits or malt liquors and such as enjoy and exercise the right of eminent domain; but every manufacturing corporation, limited partnership or joint stock association shall pay the state tax of five mills herein provided upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to its manufacturing business, in addition to the local taxes assessed upon its property in the district where located, it being the object of this proviso to relieve from state taxation only so much of the capital stock as is invested purely in the manufacturing plant and business. . . .⁷

§ 804. Exemption of leased plants of manufacturing companies. No corporation or limited partnership association organized for manufacturing purposes, whose manufacturing plant or plants, in whole or in part, are or may be leased to another corporation, limited partnership, individual or individuals,

⁵Com. v. William Mann Co., June 8, 1893, P. L. 353, which amended § 5, Act of June 8, 1891, 150 Pa. 64 (1892).

⁶Com. v. Juniata Coke Co., 157 Pa. 507 (1893).

⁷Sec. 1, Act of June 7, 1907, P. L. 430, amending § 1, Act of June 8, 1893, P. L. 353, which amended § 5, Act of June 8, 1891, 150 Pa. 64 (1892).

shall, by reason of such leasing, be deprived from the exemption from taxation upon its capital stock, or any part thereof, to which under existing laws it would be entitled if such lease had not been made.⁸

This act was passed in consequence of a decision in the case of *Commonwealth v. Macungie Iron Co.*, 3 Dauph. Co. Rep. 12 (1900), holding that a manufacturing company was not exempt from taxation on capital stock representing its plant leased by it to others and operated by them.⁹

Said Act of 1901 applies to all cases not adjudicated at the time it was passed.¹⁰

§ 805. The exemption is constitutional.¹¹

§ 806. Possession of the right of eminent domain. All manufacturing companies,¹² and iron and steel companies,¹³ incorporated under the provisions of the Act of April 29, 1874, possess the right of eminent domain, to a limited extent, but it seems that such corporations are entitled to exemption as manufacturing companies unless they actually "exercise" as well as "enjoy" the said right.¹⁴

§ 807. What corporations are manufacturing corporations within the meaning of the exemption. Corporations engaged in the following kinds of business have been held to be manufacturing corporations within the meaning of the exemption:

Dyeing woolens and cotton goods.¹⁵

Manufacture of artificial gas.¹⁶

Manufacture of brick.¹⁷

⁸Sec. 1, Act of June 11, 1901, P. L. 668.

⁹See *Com. v. Cambria Iron Co.*, 5 Dauph. Co. Rep. 101 (1902).

¹⁰*Com. v. Cambria Iron Co.*, 5 Dau. Co. Rep. 101 (1902).

¹¹*Hawes's Manufacturing Co.'s Appeal*, 1 Mona. 353 (1889); 24 W. N. C. 302; *Fox's Appeal*, 112 Pa. 337 (1886); *Com. v. Germania Brewing Co.*, 145 Pa. 83 (1891).

¹²See § 1634, *Eastman on Private Corporations*, 2nd Edition.

¹³See § 1642, *Eastman on Private Corporations*, 2nd Edition.

¹⁴*Com. v. Delaware River Iron Ship Building & Engine Works*, 2 Dauph. Co. Rep. 232 (1893).

¹⁵*Com. v. Quaker City Dye Works*, 5 Pa. C. C. 94 (1888).

¹⁶*Com. v. Allegheny Gas Co.*, 1 Dau. Co. Rep. 93 (1893); *Com. v. Chester Gas Co.*, 5 Dau. Co. Rep. 121 (1902).

¹⁷*Com. v. Excelsior Brick & Stone Co.*, Dau. C. P., No. 535, Jan. T., 1893.

- Manufacture of castings, forgings and other machinery.¹⁸
- Manufacture of coke.¹⁹
- Manufacture of hams, sides, bacon, etc., from hogs.²⁰
- Manufacture of pig iron.²¹
- Manufacture of spices, condiments, drugs, etc., from whole spices.²²
- Manufacture of sole leather by tanning hides.²³
- Manufacture of Steele.²⁴
- Oil refining.²⁵
- Preparing leaf tobacco for chewing and smoking.²⁶
- Preserving fruit.²⁷
- Printing and publishing.²⁸
- Quarrying slate, and preparing it for roofing and other purposes.²⁹
- Ship building.³⁰

And a lower court has recently held that a corporation engaged in the manufacture of cement floors, asphalt floors, pavements, roadways and structural concrete is a manufacturing corporation within the meaning of the act.³¹

A corporation which buys from others, in a rough or unfinished form, all necessary lumber, iron, steel, etc., finishes, shapes, frames, designs and makes such material suitable for use, at its

¹⁸Cramp & Sons Ship & Engine Bldg. Co., Dau. C. P., No. 263, Sept. T., 1893.

¹⁹Com. v. Hecla Coke Co., Dau. C. P., No. 490, June T., 1892.

²⁰Com. v. Penna. Packing Co., Dau. C. P., No. 3, Com. Dock't 1896; Com. v. Stowers Pork Packing & Prov. Co., Dau. C. P., No. 566, Jan. T., 1892.

²¹Com v. Dunbar Furnace Co., Dau. C. P., 382, Jan. T., 1892.

²²Com: v. A. Colburn Co., Dau. C. P., No. 306, Jan. T., 1892.

²³Com. v. Elk Tanning Co. Dau. C. P., No., 598 Com. Dock't, 1896.

²⁴Com. v. Midvale Steel Co., Dau. C. P., No. 231, Aug. T., 1886.

²⁵Com v. Atlantic Refining Co., 2 Pa. C. C., 62 (1886); 7 Dau. Co. Rep. 189.

²⁶Com. v. Clark & Snover Co., Dau. C. P., No. 18, June T., 1893.

²⁷Com. v. Ritter Conserve Co., Dau. C. P., No. 387, Aug. T., 1886.

²⁸Com. v. J. B. Lippincott Co., 7 Dau. Co. Rep. 193 (1897); Com. v. D. R. Canfield Co., Ld., 7 Dau. Co. Rep. 195 (1890).

²⁹Com. v. East Rangor Consol. Slate Co., Dau. C. P., No. 158, Jan. T., 1887.

³⁰Com. v. Wm. Cramp & Sons Ship & Engine Building Co., Dau. C. P., No. 263, Sept. T., 1893; Com. v. Del. River Ship Building & Eng. Wks., 2 Dau. Co. 232 (1893).

³¹Com. v. Filbert Paving & Construction Co., 12 Dau. Co. Rep. 57 (1909).

own shops, and sells the finished material for such uses as may be intended or appropriate; and often frames, puts together and erects the material into bridges, roofs and other structures or machinery, is a manufacturing corporation within the meaning of the act.³²

§ 808. What corporations are not manufacturing corporations within the meaning of the exemption. Electric light, heat and power companies,³³ laundry companies³⁴ and companies organized for the purpose of manufacturing steam and supplying the same to buildings and real estate owned by them³⁵ are not manufacturing corporations within the meaning of the exemption.

The exemption applies only to the classes of manufacturing corporations created by the Act of April 7, 1849, P. L. 563, and enlarged by subsequent acts, and it does not embrace companies performing a quasi public function, though their operations be within the definition of the term "manufacture" given by lexicographers.³⁶

§ 809. What investments of capital stock of manufacturing corporations are and are not entitled to exemption. The capital upon which manufacturing companies are entitled to exemption must be invested in property which is necessary to the operations of such companies, as contradistinguished from property which is merely convenient for use in connection with such operations. Thus, capital stock invested in dwelling houses and buildings rented to employees is taxable,³⁷ unless there is no other means by which the operatives may be housed, but cor-

³²Com. v. Keystone Bridge Co., 156 Pa. 500 (1893); 32 W. N. C. 479; Com. v. Pgh. Bridge Co., 156 Pa. 507 (1893).

³³Com. v. Northern E. L. & P. Co., 145 Pa. 105 (1891); Com. v. Edison Elec. Lt. Co., 145 Pa. 131 (1891); Com. v. Edison Elec. Lt. & Pr. Co., 170 Pa. 231 (1895); Com. v. Keystone L. H. & P. Co., 2 Dau. Co. Rep. 1 (1898); Com. v. U. S. Electric Lighting Co., 7 Pa. C. C. 90 (1889); Com. v. Brush Elec. Lt. Co., 145 Pa. 147 (1891).

³⁴Com. v. Keystone Laundry Co., 203 Pa. 289 (1902); Com. v. Barnes Bros. Co., 5 Dau. Co. Rep. 75 (1902).

³⁵Com. v. Arrott Mills Co., 145 Pa. 69 (1891).

³⁶Com. v. Northern Elec. L. & P. Co., 145 Pa. 105 (1891). See Com. v. Keystone, Elec. Lt. Ht. & Pr. Co., 193 Pa. 245 (1899).

³⁷Com. v. Mahoning Rolling Mill, 129 Pa. 360 (1889); 24 W. N. C. 194; Com. v. Alcott, R. & S. Co., 5 Dau. Co. Rep. 222 (1902); Com. v. Allegheny Gas Co., 1 Dau. Co. Rep. 193 (1893).

porations must not, by the selection of sites for their plants, create a necessity for the erection of such houses, or the capital invested in them will be subject to taxation.³⁸

Capital invested in a coal mine by a manufacturing corporation is not actually and exclusively employed in manufacturing, within the meaning of the law, even though all the coal mined may be used by the company in its manufacturing operations,³⁹ and a coke company is taxable on so much of its capital stock as it has invested in coal mines from which to supply its coke ovens.⁴⁰

A corporation organized for the "mining of fire clay and the manufacture of fire brick, tile and other articles made from fire clay" is taxable on so much of its capital stock as is invested in clay banks from which it takes clay for its own use in its manufacturing operations,⁴¹ and a company organized for the purpose of "mining, quarrying, manufacturing and selling slate and slate products" is taxable upon so much of its capital stock as is invested in mining slate for its own use from its own lands.⁴²

A limited partnership association organized for the purpose of manufacturing refined oils from crude petroleum is taxable on the portion of its capital invested in the business of mining and transporting crude petroleum.⁴³

The capital stock of a domestic manufacturing company invested in an office building located within the state, used exclusively in the conduct of the business of the corporation, is exempt from taxation though such office building is not located at or near the factory of the company.⁴⁴

A manufacturing corporation is taxable on so much of its capital stock as is invested in the shares of stock of foreign corporations,⁴⁵ but capital invested in trust certificates representing shares of stock in other domestic corporations upon which capital stock tax has been paid, is not taxable.⁴⁶

³⁸Com. v. Westinghouse Air Brake Co., 151 Pa. 276 (1892).

³⁹Com. v. Lackawanna Iron & Coal Co., 129 Pa. 346 (1889).

⁴⁰Com. v. Juniata Coke Co., 157 Pa. 507 (1893).

⁴¹Com. v. Savage Fire Brick Co., 157 Pa. 512 (1893).

⁴²Com. v. East Bangor Consolidated Slate Co., 162 Pa. 599 (1894).

⁴³Com. v. National Oil Co., Ltd., 157 Pa. 516 (1893).

⁴⁴Com. v. Salt Manufacturing Co., 1 Dauph. Co. Rep. 97 (1897).

⁴⁵Com. v. Bethlehem Iron Co., 5 Dauph. Co. Rep. 118 (1902).

⁴⁶Com. v. Croft & Allen Co., 5 Dauph. Co. Rep. 86 (1902); 26 Pa. C. C. 474; 11 D. R. 473.

The capital of manufacturing companies invested in goods, wares and merchandise manufactured by others and purchased to be sold by them is taxable, and so is capital invested in the bonds of either foreign or domestic corporations.⁴⁷

§ 810. Exemption of foreign manufacturing companies. Foreign manufacturing companies carrying on manufacturing within the state are entitled to exemption from taxation on the same basis as domestic corporations.⁴⁸

A domestic manufacturing company is not subject to taxation upon its capital actually and exclusively employed in manufacturing within the state because of the fact that all of its stock is owned by a foreign corporation.⁴⁹

§ 811. Manufacturing corporations must make annual reports of capital stock whether all their capital is invested in manufacturing or not. Manufacturing corporations must make annual reports of capital stock to the auditor general, whether all their capital is invested in manufacturing, and entitled to exemption from taxation, or not. Before they can be exempted from taxation on their capital stock, it must affirmatively appear that they are entitled to the same. Corporations neglecting to make reports are not only subject to the penalties prescribed by law for failure to report, but are liable to have estimated settlements made against them for tax on their entire capital stock.

§ 812. Liability of manufacturing corporations to taxation on capital invested in stocks, bonds, mortgages, etc., owned by them. Manufacturing corporations frequently own shares of stock of other corporations, bonds, mortgages, etc. If they temporarily invest in such obligations capital which is used by them in their manufacturing operations, selling or hypothecating the obligations, from time to time, as they have occasion to use in their manufacturing operations the capital in-

⁴⁷Com. v. Jarecki Manufacturing Co., 204 Pa. 36 (1902). See § 812.

⁴⁸Com. v. Olcott, Ross & Scully Co., 203 Pa. 310 (1902) affirming 5 Dauph. Co. Rep. 222 (1902); Com. v. American Car & Foundry Co., 203 Pa. 302 (1902); Com. v. Barnes Bros. Co., 26 Pa. C. C. 423 (1902); 5 Dauph. Co. Rep. 75.

⁴⁹Com. v. American Cement Co., 203 Pa. 298 (1902); Com. v. Lorain Steel Co., 203 Pa. 300 (1902); Com. v. Danville Bessemer Steel Co., 203 Pa. 313 (1902); Com. v. National Tube Co., 203 Pa. 310 (1902); Com. v. American Steel & Wire Co., 203 Pa. 311 (1902); Com. v. Carbon Steel Co., 203 Pa. 312 (1902).

vested therein, it would seem that they are as much entitled to exemption from taxation on the capital so invested as they are to the exemption of capital kept on deposit, until needed, in a bank. The accounting officers, however, have always refused to allow claims for exemption of this character, and the question has never been passed upon by the courts. Where the capital of manufacturing corporations invested in such obligations is admittedly not used in manufacturing, so much thereof as is invested in the shares of stock of other domestic corporations paying a capital stock tax, is exempt from taxation,⁵⁰ while the capital invested in the other obligations named is taxable.⁵¹

The capital stock invested in said last named obligations having been thus taxed, the obligations themselves under §1 of the Act of June 7, 1907, P. L. 430, supra, § 797 are exempt from further taxation, and should not be returned by the corporations holding the same to the local assessors, for payment of the state tax on personal property thereon, although the personal property return blank calls for such returns by manufacturing corporations, nor, where the obligations so held consist of the bonds of domestic corporations, should the treasurers of such corporations, when paying interest to such manufacturing companies on the bonds held by them, deduct the tax on corporate loans therefrom.⁵²

§ 813. Proportion of capital stock taxable in the case of corporations entitled to deductions, the capital stock of which corporations is worth less than par. Where a manufacturing corporation with a capital stock of, say, one hundred thousand dollars, and possessing property to that value, has fifty thousand dollars thereof invested in property not actually used in manufacturing, and hence taxable, it is evident that such company will be taxed, if its capital stock is appraised at par, on fifty thousand dollars of such stock, and will be exempted from tax on the remainder thereof. But suppose that the stock of the company is appraised, and the appraisal is accepted, at but seventy-five thousand dollars. In such a case, were tax to be set-

⁵⁰See §§ 798.

⁵¹Com. v. Jarecki Mfg. Co., 204 Pa. 36 (1902) reversing 2 Dau. Co. Rep. 154.

⁵²Com. v. Jarecki Mfg. Co., 204 Pa. 36 (1902) reversing 2 Dau. Co. Rep. 154; Com. v. Bethlehem Iron Co., 5 Dau. Co. Rep. 118 (1892).

tled on fifty thousand dollars of capital stock, two-thirds of the entire stock would be taxed, while in the former case but one-fourth would be taxed. An apportionment of the stock taxable, therefore, becomes necessary, which is made according to the following formula: As all the property of the company is to the amount of property not invested in manufacturing, so is the appraised value of the stock to the amount of stock taxable; or, to apply the proportion to the above case, as one hundred thousand dollars is to fifty thousand dollars, so is seventy-five thousand dollars to thirty-seven thousand five hundred dollars, the proportion of stock taxable. Similar apportionments were formerly made in all cases where any portion of the capital stock of a company was entitled to exemption from taxation, for any cause whatever, when the stock was appraised at less than par, and such appraisement is accepted,⁵³ but this method of settlement has not been resorted to for some time, and the present practice is to deduct the amount actually invested in manufacturing from the value of the stock and make settlement upon the balance.⁵⁴

§ 814. Taxation of limited partnership and joint stock associations. As has heretofore appeared,⁵⁵ joint stock associations and limited partnerships are taxable on the same basis as corporations.

There is no law in Pennsylvania under which joint stock associations, *eo nomine*, may be incorporated, but foreign joint stock associations having capital invested within the Commonwealth or doing business therein, are subject to the tax.⁵⁶

Limited partnership associations are taxable whether incorporated under the provisions of the Act of June 2, 1874, P. L. 271, or those of the Act of May 9, 1899, P. L. 625, and the amendment thereto of July 9, 1901, P. L. 625;⁵⁷ but limited partnerships formed under the Act of March 21, 1836, P. L. 143, are not taxable.⁵⁸

The actual value of the stock of a limited partnership association is determined by considering the value of the association's

⁵³Com. v. Lack, I. & C. Co., 129 Pa. 346 (1889); Com. v. Glendon Iron Co., Dau. C. P., No. 110, Mch. T., 1892.

⁵⁴See Com. v. Cambria Iron Co., 5 Dau. Co. Rep. 101 (1902).

⁵⁵See § 779.

⁵⁶Com v. Adams' Express Co., 4 D. R., 139 (1895).

⁵⁷Limited Partnership Taxation, 28 Pa. C. C. 582 (1903).

⁵⁸Limited Partnerships, 18 Pa. C. C. 87 (1896); 5 D. R. 288.

tangible property, the amount of its business, the rate of dividends declared and the extent and value of its good will and franchises.⁵⁹

When engaged in carrying on manufacturing within the state, limited partnership and joint stock associations are entitled to the same exemptions as manufacturing corporations.⁶⁰

§ 815. Special acts relating to the tax on capital stock — Bourse companies. Section 1 of the Act of June 10, 1893, P. L. 417, provides for the incorporation of corporations for the purpose of erecting and maintaining a bourse or exchange hall. The sections of said act which relate to the taxation of the capital stock of such corporations are as follows:

Any corporation incorporated under the provisions of this act, or any corporation heretofore incorporated for the purchase and sale of real estate or for holding, leasing and selling real estate, and accepting the provisions of this act, shall file in the office of the Secretary of the Commonwealth a certificate specifying the date of incorporation and the Act of Assembly under which they were incorporated, and the lot or building and the part or parts thereof to be used as a bourse or exchange hall, or for an exhibition hall for the display of manufactured articles or natural products and the value thereof, and what proportion the value of the real estate used as a bourse or exhibition hall or for an exhibition hall for the display of manufactured articles or natural products bears to the entire capital stock of such corporation, and upon such proportion of their capital stock corporations incorporated under this act or heretofore incorporated for the purchase and sale of real estate, or for holding, leasing and selling real estate and accepting the provisions of this act shall be exempt from taxation.⁶¹

In assessing the tax upon the capital stock of corporations accepting the provisions of this act as provided in the second section thereof, that part of the capital stock exempt from taxation shall bear the same proportion to its whole capital stock as the value of the real estate occupied as such bourse or exchange hall or exhibition hall for the display of manufactured articles or nat-

⁵⁹Com. v. John W. Haney Co., Ltd., 1 Dauph. Co. Rep. 184 (1895). ⁶⁰Sec. 2, Act of June 10, 1893, P. L. 417.

⁶¹See § 803.

ural products bears to the entire capital stock of such corporations.⁶²

It shall be the duty of the auditor general to determine what part of the capital stock of such corporations shall be exempt from taxation, and from his decision an appeal shall lie as now provided by law in other cases involving questions of taxation.⁶³

Any corporation accepting the provisions of this act, which shall in any year declare a dividend upon its entire capital stock, shall first file in the office of the auditor general a certificate setting forth the intent of such corporation to pay a dividend as aforesaid, and thereupon the entire capital stock of such corporation shall be subject to taxation for such year.⁶⁴

. . . If any corporation accepting the provisions of this act . . . shall declare a dividend without first filing a certificate in the office of the auditor general, as provided in the fifth section of this act, the entire capital stock of such corporation shall thereupon be liable to taxation, together with a penalty of twelve per centum upon that portion of the capital stock theretofore exempt from taxation under the provisions of this act.⁶⁵

§ 816. Distilling companies. Companies organized and incorporated for the purpose of distilling liquors and selling the same at wholesale, shall constitute a separate class for the purpose of taxation; and every such corporation, joint stock association, limited partnership or company shall be subject to pay into the treasury of the Commonwealth annually a tax at the rate of ten mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special and preferred. The auditor general shall require said corporations to report to him annually all such facts as may be by him deemed necessary to arrive at the actual value of the capital stock of said corporations. He is hereby authorized and required to send out blanks, in proper form, to secure such information as all other corporations are required by law to give the accounting officers in their annual reports, so that the actual value of the capital stock may be ascertained.⁶⁶

*Sec. 3, Act of June 10, 1893,
P. L. 417.

*Sec. 4, Act of June 10, 1893,
P. L. 417.

*Sec. 5, Act of June 10, 1893,
P. L. 417.

*Sec. 6, Act of June 10, 1893,
P. L. 417. .

*Sec. 2, Act of July 15, 1897,
P. L. 293.

§ 817. Rate of capital stock tax on fire and marine insurance companies. . . . Provided further, in case of fire or marine insurance companies, the tax imposed by this section shall be at the rate of three mills on each dollar of the actual value of the whole capital stock.⁸⁷

§ 818. Iron and steel manufacturing companies incorporated under the provisions of the act of March 21, 1873, P. L. 28. The 10th section of the Act of April 18, 1873, P. L. 28, provides as follows:

"Whenever any persons forming a company under the provisions of this act, shall state in the certificate required by the first section of this act, that they are willing that the stockholders shall be individually liable for all debts of the company, as fully as if they were members of a partnership, then, and in that event, the stockholders of such company, whether holding the certificates of stock in their own name, or being the parties beneficially interested therein, shall be jointly and severally liable, in their individual capacities and estates, for all debts, contracts and other liabilities of the company, contracted or incurred during the time such stockholders respectively own their stock, or are beneficially interested therein: Provided, that all companies incorporated under this act, upon the condition aforesaid, and whose stockholders shall thereby assume such individual liabilities as aforesaid, shall be subject to only one-half the taxation now or hereafter imposed by the laws of this Commonwealth upon such incorporated companies."⁸⁸

The special rate of taxation above specified was not repealed, as to stockholder's acquiring rights or incurring liabilities under said Act of 1873, by the Act of April 24, 1874, and subsequent general revenue acts.⁸⁹

§ 819. Corporations exempt from tax under provisions of special acts. The acts providing for the incorporation of certain corporations, respectively, contain provisions that the capital stock of such corporations, or the shares of stock thereof, shall either be exempt from taxation, or not taxed except under certain circumstances. Where these exemptions were granted for

⁸⁷Sec. 1, Act of June 7, 1907, P. L. 430, amending § 1, Act of June 8, 1893, P. L. 353, which amended § 5, Act of June 8, 1891, P. L. 229, which amended § 21 of the Act of June 1, 1889, P. L.

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⁸⁸Sec. 10, Act of March 21, 1873, P. L. 28.

⁸⁹Com. v. Stony Creek Woolen Mfg. Co., 3 Dauph. Co. Rep. 1 (1880).

a consideration, and not gratuitously, they are not repealed by subsequent general revenue acts⁷⁰ except in the following cases:

I. Where the act of incorporation reserves to the Commonwealth the right to alter or amend the same.⁷¹

II. In the case of banks incorporated since 1837.⁷²

III. In the case of companies incorporated under the provisions of the Act of February 19, 1849.⁷³

IV. In the case of all corporations incorporated since 1857.⁷⁴

Where a railroad company leases its railroad to another company but retains its own separate and independent existence, its own capital stock and its own officers, it does not lose the benefit of a statute exempting it from taxation, passed prior to the execution of the lease.⁷⁵

A provision in an act incorporating a company that it shall pay a bonus to the Commonwealth in lieu of any tax on dividends, does not relieve the company from the payment of the tax on capital stock,⁷⁶ nor does the exemption from taxation of the shares of stock of a corporation, by a special act incorporating the company, relieve the corporation from the payment of said tax.⁷⁷

A corporation, the special charter of which provides that "the property real and personal" which said company holds or may acquire shall be exempt from taxation, is not exempt from the tax on capital stock.⁷⁸

§ 820. Miscellaneous. A tax assessed by the city of Baltimore under the laws of Maryland against the shares of stock of a Maryland corporation, owned by a citizen of Pennsylvania and enforced against the receivers of the corporation may, when

"Com. v. Phila. & Erie R. R. Co., 164 Pa. 252 (1894); Com. v. Pottsville Water Co., 94 Pa. 516 (1880); Com. v. Erie R. R. Co., 98 Pa. 127 (1880).

"Union Improvement Co. v. Com., 69 Pa. 140 (1871).

"Iron City Bank v. Pgh., 37 Pa. 340 (1860).

"Com. v. Fayette Co. R. R. Co., 55 Pa. 452 (1867).

"See § 21.

"Com. v. Phila. & Erie R. R. Co., 164 Pa. 252 (1894).

"Com. v. Jacobus & Nimick Mfg. Co., 1 Dauph. Co. Rep. 82 (1883); Com. v. Pittsburgh Forge & Iron Co., 2 Pears. 374 (1870).

"Com. v. Minersville Water Co., 13 Pa. C. C. 17 (1893); 2 D. R. 738.

"Com. v. Danville, H. & W. R. Co., 2 Pears. 400 (1875).

paid by such receivers, become by statute a lien against the stock, but the decree of the court in such proceedings does not raise a cause of action in personam against the Pennsylvania stockholder.⁷⁹

⁷⁹Mercantile Trust & Dep. Company of Balto v. Mellon, 196 Pa. 176 (1900).

CHAPTER XXXVI.

TAX ON CORPORATE LOANS.¹

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- 841. Procedure where corporate loans are returned by the holders thereof, by mistake, to local assessors.
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§ 821. **History.** The loans of private corporations were first made a separate subject of taxation by § 3 of the Act of April 30, 1864, P. L. 218, which provided that the president, treasurer, cashier or other officer of every company incorporated, or that may hereafter be incorporated, which pays interest to its depositors, bondholders or other creditors, upon which, by the laws of the Commonwealth, a state tax is imposed, shall,

¹This chapter should be read in treating of the tax on personal connection with Chapter XLVII,

before payment of the same, retain from said depositors, bondholders, or creditors the amount of the state tax imposed by existing laws, and shall pay over the same to the state treasurer.

The said 3rd section of the Act of 1864 was specifically repealed by § 16 of the Act of May 1, 1868, P. L. 108, and its provisions were superseded by the 11th section of the said Act of 1868, which provided that the officers of every corporation doing business in Pennsylvania, except domestic banks or savings institutions, which pays interest to its bondholders or other creditors, shall, before the payment of the same, retain from said bondholders or creditors a tax of five per centum upon every dollar of interest paid as aforesaid. The proviso to said section provided that the principal sum, from the interest on which the said tax is deducted, shall not be assessed and taxed for state purposes in the valuation of the personal property or returned by the county commissioners to the Board of Revenue Commissioners.

It will be noted that the Act of 1868 thus substituted for a tax on the principal sum of corporate bonds and other indebtedness, a tax upon the interest paid on such principal, and not on the principal itself.

The said 11th section of the Act of May 1, 1868, P. L. 108, was repealed by the Act of March 21, 1873, P. L. 46, the fourth section of which provided that every company, except domestic banks and savings institutions, authorized to issue bonds or evidences of indebtedness, which pays interest to its bondholders or other creditors, shall pay to the state treasurer for the use of the Commonwealth semi-annually, a tax equal to five per centum on every dollar of interest paid as aforesaid. By the said section the tax was, therefore, laid directly upon the corporation, instead of upon the holders of the obligations thereof, as was the case under the provisions of the preceding acts.

The fourth section of the Act of March 21, 1873, P. L. 181, was repealed by the 11th section of the Act of April 24, 1874, P. L. 72, and the tax on corporate loans was thus wholly abolished.

In the original inception of the tax, therefore, corporations were merely required to act as the agents of the Commonwealth in the collection of the state tax on personal property by deducting the same from the interest paid to the holders of their obligations.

Under the Act of 1868, the holders of corporate loans instead of being taxable, through the corporations issuing the same, on the principal sum thereof, were made taxable at the rate of five per centum on the amount of interest paid them on such obligations, while by the Act of 1873 the said tax continued to be at the rate of five per centum on the interest, but the tax was transferred from the bondholders to the corporations themselves.

The tax on corporate loans was re-established by the 17th section of the Act of June 7, 1879, P. L. 120, which provided that :

"All corporations paying interest on loans hereby taxed for state purposes only shall deduct the said tax from the said interest and pay the same into the state treasury."

This was an attempt to return to the original system of taxing the holders of corporate obligations on the principal sum of the obligations held by them, through the corporations issuing the same, and not on the interest paid on said principal.

The foregoing provision was superseded by the second section of the Act of June 10, 1881, P. L. 99, which is as follows :

Hereafter all corporations, paying interest on a loan or loans which are taxable for state purposes, whether secured by bond, mortgage, recognizance or otherwise, shall report annually in the month of November to the auditor general the amount of such indebtedness owned by residents of this Commonwealth as nearly as can be ascertained on the oath of the president or treasurer, and shall pay into the state treasury four mills upon every dollar of such indebtedness so returned and owned by residents, as aforesaid, within fifteen days after the thirty-first day of December in each year; and for every failure to report or pay as aforesaid, the auditor general shall add ten per centum as a penalty to the said tax; and the said tax may be deducted by the corporation paying the same from the interest on such indebtedness; whereupon such indebtedness whether secured by bond, mortgage, judgment or otherwise shall be exempted from other taxation in the hands of the holders thereof.

It will be observed that the foregoing section imposed a tax in the first instance upon the corporations issuing the obligations, but permitted them, at their option, to deduct the same from the interest paid on such indebtedness, in which case the obligations were exempt from other taxation in the hands of the holders.

The foregoing provisions of the Acts of 1879 and 1881 were declared unconstitutional, upon the ground that they contained no provision for the assessment and valuation of the loans taxed, and hence did not constitute an independent scheme of taxation of corporate loans.²

The tax on corporate loans is now imposed under the provisions of the following act:

§ 822. Imposition of the tax. Hereafter it shall be the duty of the treasurer of each private corporation incorporated by or under the laws of this Commonwealth, or the laws of any other state, or of the United States, and doing business in this Commonwealth, upon the payment of any interest on any scrip, bond, or certificate of indebtedness issued by said corporation to residents of this Commonwealth, and held by them, to assess the tax imposed and provided for state purposes upon the nominal value of each and every said evidence of debt, and to report on oath annually, on the first Monday of November, to the auditor general, the amount of indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained, and it shall be his further duty to deduct three [four] mills on every dollar of the interest paid as aforesaid, and return the same into the state treasury within fifteen days after the thirty-first of December in each year, and his compensation for his services shall be the same that city and borough treasurers receive for similar services; and for every failure to assess and pay said tax, and make report as aforesaid, the auditor general shall add ten per centum as a penalty to the amount of the tax; in payment of said tax by a corporation, the bonds, certificates, or other evidences of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same.³

It will be observed that the above provision follows the language of the 11th section of the Act of May 1, 1868, P. L. 108, in providing that the tax shall be "on every dollar of the interest paid as aforesaid," but notwithstanding this plain provision, the tax is held to be upon the principal sum of corporate obligations and not upon the interest paid thereon; that is, the tax "is the

²Com. v. Lehigh Valley R. R. Co., 104 Pa. 89 (1883); 13 W. N. C. 469.

³Sec. 4, Act of June 30, 1885, P. L. 193. X

state tax imposed and provided on mortgages, money owing by solvent debtors, etc.," which is upon the principal of said obligations.⁴

§ 823. **The tax is constitutional.** The tax on loans of private corporations is constitutional,⁵ and was not repealed by the Act of June 8, 1891.⁶

X § 824. **Nature of the tax.** "A careful examination and analysis of the provisions of the fourth section of the Act of 1885, is necessary to a clear understanding of the purpose of the Legislature. It will be observed that the tax, which the treasurer of the corporation is by this section authorized and directed to assess and collect, is 'the tax imposed and provided for state purposes;' that is to say, the tax which is imposed and provided by the first section of the same act, upon the general class of subjects, consisting of mortgages, money owing by solvent debtors, etc., at the rate of three mills on the dollar of the value thereof, annually. The effect of the fourth section . . . was to subdivide this general class into two particular classes, one embracing the debts of private corporations, to be taxed at the rate specified on their nominal value, the other embracing the residue of the general class. . . . It is plain, then, that the tax in question, although rated on the nominal value, is 'the state tax imposed and provided on mortgages, money owing by solvent debtors,' etc."⁷

The tax on corporate loans is not a tax laid on the company, nor on the bondholders thereof as a body, but on each resident bondholder as an individual; and the corporation or its treasurer is merely the agent of the Commonwealth or instrument of collection for the convenience of the state,⁸ but in the case of

⁴Delaware Div. Canal Co. v. Com., 123 Pa. 594 (1889); Com. v. Wilkes-Barre & Scranton Ry., 162 Pa. 614 (1894). See op. of ct. below in the last-named case, p. 619.

⁵Com. v. Lehigh Valley R. R. Co., 129 Pa. 429 (1889); Coal Ridge I. & C. Co. v. Jennings, 127 Pa. 397 (1889); Com. v. Del. Div. Canal Co., 123 Pa. 594 (1889); Com. v. N. Y., L. E. & W. R. R. Co., 145 Pa. 57 (1891).

⁶Com. v. Wilkes-Barre & Scranton R. R. Co., 162 Pa. 614 (1893).

⁷Com. v. Lehigh Valley R. R. Co., 129 Pa. 445 (1889); Com. v. Del. Div. Canal Co., 123 Pa. 594 (1889); Coal Ridge I. & C. Co. v. Jennings, 127 Pa. 397 (1889).

⁸Com. v. Phila. & Reading R. R. Co., 150 Pa. 312 (1892); Com. v. Lehigh Valley R. R. Co., 104 Pa. 89 (1883).

the failure of the corporation through its treasurer to collect the tax the corporation is liable therefor.⁹

§ 824a. **Loans subject to the tax not to be returned for payment of state tax on personal property.** . . . Provided, that the taxable person, co-partnership, unincorporated association, joint stock association, limited partnership, corporation or other persons making the return aforesaid, shall not include in said return the obligations of public or private corporations, the tax upon which is required by law to be collected from the holders of such obligations and paid into the state treasury by the corporation, it being the true intent and meaning of this act that the provisions of the law in force at the time of the passage of this act relating to the collection of the tax upon such obligations shall remain unaffected by the present act.¹⁰

§ 825. **Rate of tax.** The rate of the tax on corporate loans, which was originally fixed at three mills on the dollar, by the above Act of June 30, 1885, is now four mills, under the provisions of § 1 of the Act of June 8, 1891, P. L. 229.¹¹

§ 826. **Tax year.** The tax is imposed for the calendar year.¹²

§ 827. **Tax is on the nominal value of obligations.** The 4th section of the Act of June 30, 1885, supra, requires the treasurers of private corporations to assess the tax imposed and provided for state purposes "upon the nominal value of each and every such evidence of debt." This requirement is constitutional, and it is permissible, under the constitution, to place corporate obligations in one class for purposes of taxation, and tax the same upon their nominal value, and to tax all other obligations upon their actual value.¹³

⁹Com. v. Phila. & R. C. & I. Co., 137 Pa. 481 (1890); Com. v. Wilkes-Barre & Scranton R. R. Co., 162 Pa. 614 (1894); Com. v. Phila. & R. C. & I. Co., 162 Pa. 623 (1894); Com. v. Peoples Pass. Rwy. Co., 183 Pa. 353 (1898); Com. v. Northern Central Rwy. Co., 2 Dauph. Co., Rep. 67 (1899); Com. v. Penna. Salt Mfg. Co., 145 Pa. 53 (1891); Com. v. Del. Div. Canal Co., 123 Pa. 594

(1889). See Com. v. Phila., 157 Pa. 558 (1893).

¹⁰Sec. 2, Act of June 1, 1889, P. L. 420. See § 841.

¹¹Com. v. Wilkes-Barre & Scranton Railway, 162 Pa. 614 (1894).

¹²Com. v. Lehigh Valley R. R. Co., 129 Pa. 429 (1889).

¹³Com. v. Del. Div. Canal Co., 123 Pa. 594 (1889); Coal Ridge I. & C. Co. v. Jennings, 127 Pa. 397 (1889); Com. v. Lehigh Valley R. R. Co., 129 Pa. 429 (1889).

§ 828. What organizations required to collect the tax.

Under the provisions of the foregoing 4th section of the Act of June 30, 1885, the treasurers of private corporations only are required to collect the tax. Hence, the obligations of limited partnership and joint stock associations are not subject to the tax, but such obligations are subject to the state tax on personal property in the hands of the holders thereof, and should be returned by such holders to the local assessors for the imposition of said tax.

The language of the Act of 1885 is broad enough to cover private corporations of all kinds, but corporations not for profit are not required by the accounting officers to make reports or pay tax under the act. Their obligations are taxable for state purposes, however, in the hands of the holders thereof.

X The liability of foreign corporations to collect the tax is discussed in the next section.

National banks, and state banks and savings institutions, are not required to make reports of loans, though within the meaning of the Act of 1885, inasmuch as the nature of their business is such that they do not issue bonds or certificates of indebtedness. Trust companies, however, sometimes do, and such obligations are taxable.

§ 829. Loans held by non-residents not taxable. Under the Acts of 1864 and 1868 it was held by the courts of this state that loans of corporations of Pennsylvania or of foreign corporations doing business within the state were taxable when held by non-residents of the state equally with those held by residents thereof.¹⁴

But in a leading case¹⁵ the Supreme Court of the United States held that such obligations held by non-residents were not taxable.

X The language of the fourth section of the Act of June 30, 1885, supra, is, that the tax shall be deducted from the payment of interest on obligations issued by private corporations, "to residents of this Commonwealth and held by them."

¹⁴Maltby v. Reading & Columbia R. R. Co., 52 Pa. 140 (1866); Pgh. Ft. W. & C. R. R. Co. v. Com., 66 Pa. 73 (1870); Erie R. R. Co. v. Com., 3 Brewst. 374 (1871); Cleveland, P. & A. R. R. Co. v. Com., 2 Leg. Gaz. 404 (1870).
¹⁵State Tax on Foreign Held Bonds, 15 Wall. 300 (1872).

"A strict construction of this act would confine the liability to securities issued to and held by residents of the state. But, while this would be a reasonable construction of the language of the act, it is fair to assume that the intent was to tax all of the bonds actually owned and held within the state, whether issued to residents or not, and it must be so construed."¹⁶

It was originally held that in order to be exempt from tax on their loans on account of the non-residence of the holders thereof, corporations must affirmatively show that their loans were in fact held by non-residents,¹⁷ and that in the absence of any proof to the contrary bonds issued by domestic corporations must be presumed to be owned by residents of the state,¹⁸ and also that where bonds were issued in the state to residents thereof it may be presumed, in the absence of proof that the ownership has not changed, and while this presumption applies to all the bonds, the ownership of the particular bonds need not be proved.¹⁹

But the fact that a certain proportion of the registered indebtedness was shown to belong to residents of the state did not raise the presumption that the remainder of the indebtedness was held by residents in the same proportion.²⁰

In latter cases, however, it is held that there is no presumption that the bonds of domestic corporations are held by residents of the state.²¹

"The tax, therefore, is not a general tax on all bonds, but only on such as are issued to residents of this Commonwealth and held by them, and the duty of the corporation is to assess it and report to the auditor general the amount of the indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained.' The ascertainment of this amount is a matter of fact depending in each case on the circumstances and the evidence. There is no presumption in regard to it. . . . The duty of the corporation is to use diligence to ascertain the residence of its bondholders and whether it has done so is a question of fact in each case to be determined by the circumstances and the evidence."²²

¹⁶Com. v. N. Y. L. E. & W. R. R. Co., 145 Pa. 57 (1891), op. of the court below.

¹⁷Com. v. Penna. Salt Mfg. Co., 145 Pa. 53 (1891); Com. v. Chester City, 123 Pa. 626 (1888).

¹⁸Com. v. Lehigh Valley R. R. Co., 129 Pa. 429 (1889).

¹⁹Com. v. N. Y. L. E. & W. R. R. Co., 145 Pa. 57 (1891).

²⁰Com. v. N. Y. L. E. & W. R. R. Co., 145 Pa. 57 (1891).

²¹Com. v. Lehigh Valley R. R. Co., 186 Pa. 235 (1898).

²²Com. v. Lehigh Valley R. R. Co., 186 Pa. 235 (1898).

It is the duty of the treasurer of a corporation making a return for tax on loans to show affirmatively that he has used the utmost diligence in endeavoring to ascertain the residence of the holders of the loans, and if he fails to do so and returns a large number of bonds as being held by persons whose residences are unknown, the corporation will be liable for his negligence and will be charged with the tax on the loans so held.²³

It is not the duty of the treasurer of a corporation to deduct the tax from interest paid on obligations held by persons whose residences he is unable to ascertain, after having made diligent efforts to learn the same,²⁴ and it is the duty of the courts to decide whether the treasurer has exercised such diligence as will relieve his corporation from liability. A treasurer's report may, in itself, furnish sufficient evidence of diligence, but from some source the court must learn what the treasurer has done before it is possible to draw the inference that he has discharged his full duty.²⁵

The auditor general may correct mistaken averments in the loans tax report of the treasurer of a corporation, concerning the ownership of the evidences of indebtedness of such corporation, and base his settlement on more accurate information obtained by him, and, upon appeal, the court may hear evidence as to such ownership and include in its judgment tax upon such as are properly shown to be taxable; and such action by the court and auditor general is not an assessment of evidences of indebtedness which were not previously assessed.²⁶

Where a corporation agrees, on the issue of any obligations, to "pay any and all sums assessed or to be assessed by the states of Maryland and Pennsylvania, or either of them, for state tax upon loan or interest, or any part thereof, when the same shall be payable by the holder or holders of interest coupons attached," or binds itself in like or similar manner to pay all state taxes that may be required of the holders of its obligations, the corporation must then pay tax on every bond that is within the

²³Com. v. People's Pass. Rwy. Co., 183 Pa. 353 (1898). See § 83.

²⁴Com. v. Manor Gas Coal Co., 5 Dauph. Co. Rep. 81 (1902); Com. v. N. Y. L. E. & W. R. R. Co., 145 Pa. 57 (1891).

²⁵Com. v. Allentown Terminal R. R. Co., 2 Dauph. Co. Rep. 81 (1899).

²⁶Com. v. Northern Central R. R. Co., 2 Dauph. Co. Rep. 64 (1899).

power of the state, no matter whether its treasurer has been able to ascertain the residence of the holder thereof, or not.

"As we regard it, this appeal raises only one question that needs consideration: Does the defendant fulfil its covenant to pay the tax on these bonds, by making diligent inquiry concerning the residence of the bondholders? We have recently decided that such inquiry is the duty of the treasurer, and that the corporation is only liable if he is in default; but the decision does not apply to a situation like this, where the corporation has expressly agreed to pay the tax upon its taxable obligations. As it seems to us, this agreement imposes the duty of paying the tax upon every bond that may be discovered to be taxable, whether the discovery be made by the corporation itself or by the Commonwealth. The defendant has undertaken not only to ascertain what bonds are taxable by the state of Pennsylvania, but also to pay the tax upon every bond that is within the power of the state. . . . Diligence does not discharge its full contract obligation. . . . When bonds are shown to be taxable, there is no answer except payment."²⁷

§ 830. Loans held by persons whose residences are unknown. As appears in the foregoing section, loans held by persons whose residences the treasurer of a corporation is unable to ascertain, after careful and exhaustive inquiry, are not taxable, in theory; but, in fact, it is the practice of the auditor general's department, frequently, to tax some proportion of such loans, the proportion varying with the facts in each case, which tax is usually paid in preference to taking an appeal, on the trial of which the court might not be satisfied that the treasurer had used proper diligence in attempting to locate the holders of such loans, in which case the entire amount of said loans would be taxed.

It is frequently extremely difficult to ascertain the residences of holders of coupon bonds which have been outstanding for some time. Coupons are usually presented for payment through banks, the officers of which, it seems, are not required to disclose the affairs of their customers and depositors in answer to questions from corporations seeking to locate the holders of their bonds.²⁸

²⁷Com. v. Northern Central R. R. Co., 2 Dauph. Co. Rep. 67 (1897).

²⁸Com. v. Manor Gas Coal Co., 5 Dau. Co. Rep. 81 (1902).

Of course, if the auditor general is not satisfied that proper diligence has been exercised by a treasurer in locating the bonds of his corporation, he settles tax upon the entire amount of loans returned to him by the treasurer, in the report of loans of the corporation, as held by persons whose residences are unknown.²⁹ Or, if, though satisfied that the treasurer has made a diligent search, the auditor general knows from his own investigations that some of the obligations returned as held by persons whose residences are unknown are, in fact, held by residents of Pennsylvania, he settles tax thereon.³⁰

Bonds issued by corporations of this state, doing business therein, and held by other corporations of the state in trust for persons "whose residences are unknown," are taxable, and where a corporation wholly neglects to assess and collect the tax on said bonds, and especially in the absence of any proof to the contrary, the bonds must be presumed to be owned by residents of Pennsylvania.^{30a}

§ 831. Loans of corporations held by other corporations. Corporations paying a capital stock tax are not subject to further taxation on the bonds, mortgages, etc., held by them, in which the whole body of the stockholders or members as such have the entire equitable interest in remainder, this because the capital representing such obligations has been already taxed, and hence the treasurers of corporations, when paying interest to other corporations which pay a capital stock tax, on the bonds of the first named corporations held by them, will not deduct the tax therefrom,³¹ but corporate obligations held by a corporation as trustee are taxable under the terms of the act.³²

Corporate loans held by national banks are not taxable, because the Act of Congress forbids the taxation of national banks otherwise than upon their shares of stock and real estate, and corporate loans held by state and savings banks paying the four-

²⁹Com. v. Penna. Salt Mfg. Co., 145 Pa. 53 (1891); Com. v. 13th & 15th St. Pass. Ry. Co., 2 Dau. Co. Rep. 391 (1890); Com. v. Frankford & Southwark Phila. C. P. Ry. Co., 7 Dau. Co. Rep. 321 (1890).

³⁰Com. v. Northern Central Ry. Co., 2 Dau. Co. Rep. 64 (1896).

^{30a}Com. v. Lehigh Valley R. R. Co., 129 Pa. 429 (1889).

³¹See § 797. Com. v. Jarecki Mfg. Co., 204 Pa. 36 (1902).

³²See § 797. Com. v. Lehigh Valley R. R. Co., 129 Pa. 429 (1889); Guthrie v. Pgh., C. & St. L. Ry., 158 Pa. 433 (1893).

mill tax on or before March 1st in each year are also not taxable;³³ neither are corporate obligations held by trust companies collecting the tax of five mills on the dollar of the value of their shares of stock on or before the first day of March in each year, under the provisions of § 1, Act of June 13, 1907, P. L. 640, *infra*, § 897.

§ 832. Obligations assumed by corporations. Corporations are taxable not only on the obligations originally issued by them but also on those which having been issued by others were subsequently assumed by them. Such assumption, however, must be complete. Thus, if a company purchase property covered by a pre-existing mortgage, the company must, in order to be taxable upon the mortgage, have wholly assumed the mortgage debt, so that it would be liable for any difference between the price which the property might bring on the foreclosure of the mortgage, and the amount of the mortgage debt, if any such difference existed. Otherwise the mortgage, if given by an individual, should be returned by the mortgagee to the local assessor for taxation.³⁴

Where a corporation guarantees the payment of interest on the bonds of another corporation and pays the same, but fails to deduct and retain the tax thereon, the principal debtor corporation is not liable for said tax.³⁵

§ 832a. Notes given by corporations. The 4th section of the Act of June 30, 1885, *supra*, requires that the tax on corporate loans shall be deducted from interest paid "on any scrip, bond or certificate of indebtedness." This language, of course, covers notes given by corporations, but notes given in the transaction of the current business of corporations, for short periods, are not taxable,³⁶ and notes "discounted or negotiated by any bank or banking institution, savings institution or trust company," are specifically exempted from taxation by the 1st

³³Com. v. Clairton Steel Co., 222 Pa. 293 (1908); People's Savings Bank v. Monongahela River Consol. C. & C. Co., 29 Pa. Super. Ct. 153 (1905); Com. v. White Haven Water Co., 11 Dau. Co., Rep. 22 (1908).

³⁴Com. v. Hillside Coal & I. Co., 1 D. R. 742 (1890); Com. v. Union

Traction Co., 192 Pa. 507 (1899); Com. v. Langdon, 1 Dau. Co. Rep. 123 (1890).

³⁵Com. v. Phila., Newtown & N. Y. R. R. Co., 13 Pa. C. C. 65 (1893).

³⁶Com. v. Manor Gas Coal Co., 5 Dau. Co. Rep. 81 (1902).

section of the Act of June 8, 1891, P. L. 229, recently amended by Act of May 1, 1909, P. L. 229,³⁷ but this exemption does not apply to notes discounted or negotiated by private bankers or unincorporated banks.³⁸

The accounting officers, until recently, held that if notes discounted by banks were renewed, from time to time, so as to cover a considerable space of time, the loans secured thereby were thus made continuous loans which were taxable, but it has been since decided that such notes are not taxable, and that it is immaterial whether notes are regularly discounted by banks or whether interest is paid on them as they fall due.³⁹

§ 833. Apportionment of tax for part of the tax year. Corporate loans are taxable only for the portion of the tax year during which they are outstanding.⁴⁰

§ 834. Payment of interest on corporate loans. As the tax on corporate loans is required to be deducted by the treasurers of corporations from the interest paid on their obligations, it follows that where no interest is paid during a tax year, no tax can be deducted, and the obligations on which no interest is paid are not taxable.⁴¹

Where reconstruction trustees made payment of interest with money voluntarily subscribed by certain stock and junior loanholders, the trustees taking assignments of coupons as a means of reimbursement, held, that as the payment was a voluntary advancement of money by parties not liable therefor, and not as agents of the corporation, it was not such a payment of interest by the corporation as would require the deduction of the tax on corporate loans therefrom.⁴²

A subsequent deposit by a corporation, to pay advances wherewith to pay interest for preceding years, although a ratification and adoption of what had been done as having been done on behalf of the company, and for its benefit, is not such a payment of

³⁷See § 911.

³⁸Com. v. McKean County, 200 Pa. 383 (1901).

³⁹Com. v. White Haven Water Co., 11 Dauph. Co. Rep. 22 (1908).

⁴⁰Com. v. Phila. Traction Co., 1 Dauph. Co. Rep. 117 (1889); Com. v. Phila. & Read. R. R. Co., 150 Pa. 312 (1892).

⁴¹Com. v. Phila. Traction Co., 1 Dauph. Co. Rep. 117 (1889);

Com. v. J. Langdon & Co., Inc., 1 Dauph. Co. Rep. 123 (1889); Com. v. Phila. Newtown & N. Y. R. R. Co., 13 Pa. C. C. 65 (1893).

⁴²Com. v. Phila. & R. R. Co., 150 Pa. 312 (1892); 30 W. N. C. 449.

interest that the company is bound to account for tax under the Act of 1885.⁴³

Where bonds of a practically insolvent company are in good faith exchanged for bonds which fund the arrears of interest, the funding of the interest is not such payment of interest as will render the company liable for tax on its obligations. The payment contemplated by the act is a payment in money.⁴⁴

Where a corporation guarantees the payment of the bonds of another company, and pays the same, but neglects to deduct and return the tax thereon, the principal debtor corporation is not liable for said tax.⁴⁵

The receivers of a railroad company, which was the guarantor of the bonds of a coal company, purchased from the holders of some of the bonds interest coupons at a discount. Said coupons were then canceled, surrendered to the coal company and charged to an account current. On this state of facts it was originally held⁴⁶ that for purposes of taxation under said act this was an equivalent to payment of interest by the coal company and hence it was the duty of the treasurer to make a proper assessment, and for the receivers to pay the tax, failing in which payment the ten per cent. penalty imposed by the Act of 1885 was properly imposed.

On reargument, however,⁴⁷ the court said:

" . . . In writing the opinion of the court, the fact was accidentally overlooked that the actual payment was made by the railroad company, and that it was not until some time afterwards that the coal and iron company was charged with, and settled for, the amount. While, therefore, this accounting and settlement were equivalent to an original payment, for purposes of taxation they do not necessarily show a default by the treasurer of the coal and iron company by which the penalty was incurred."

§ 835. Liability of obligations of foreign corporations to tax. The 4th section of the Act of June 30, 1885, *supra*,

⁴³Com. v. Phila. & R. R. Co., 150 Pa. 312 (1892); 30 W. N. C. 449.

⁴⁴Com. v. Phila. & R. R. Co., 150 Pa. 312 (1892); 30 W. N. C. 449.

⁴⁵Com. v. Phila., Newtown & N. Y. R. R. Co., 13 Pa. C. C. 65 (1893), following Com. v. P. & R.

R. Co., 150 Pa. 312, and distinguishing Com. v. Phila. & R. C. & I. Co., 137 Pa. 481.

⁴⁶Com. v. Phila. & R. C. & I. Co., 137 Pa. 481 (1890); 26 W. N. C. 455.

⁴⁷Com. v. Phila. & R. C. & I. Co., 145 Pa. 283 (1891); 29 W. N. C. 507.

applies not only to domestic private corporations, but to corporations "incorporated by or under the laws . . . of any other state, or of the United States, and doing business in this Commonwealth."

It was originally held that such foreign corporations were charged with the same duty, and to the same extent, in the collection of the tax on corporate loans as domestic corporations.⁴⁸

Subsequently, it was held by the Supreme Court of the United States⁴⁹ that the Commonwealth could not "constitutionally impose upon the New York, Lake Erie and Western Railroad Company the duty, when paying in the City of New York the interest due upon scrip, bonds, or certificates of indebtedness of that company held by residents of that state [Pennsylvania], of deducting from the interest so paid the amount assessed upon the bonds and moneyed capital in the hands of such residents."

Owing to the fact that a large proportion of the foreign corporations doing business in Pennsylvania pay interest on their obligations by cheques drawn in New York City, the accounting officers for many years after the rendering of the above decision made no attempt to collect the tax on loans from foreign corporations doing business within the state, whether they paid interest on their loans without or within the state. The practice now is, however, to require all such foreign corporations to make reports of loans, and to tax obligations thereof held by residents of Pennsylvania, interest on which is paid within the state.

§ 835a. Bonds sold "free of tax." Corporate obligations are sometimes sold "free of tax," by which is meant that the corporations selling the same agree that they will pay all taxes to which the holders of their obligations may be subject on account thereof. Such an agreement does not, of course, in any way affect the right of the Commonwealth to collect the tax on such obligations. Inasmuch as the Commonwealth looks to the corporation itself for the payment of the tax, it is immaterial whether the corporation collects the tax from the interest paid the bondholders or pays the same directly.

⁴⁸Com. v. Del. & H. Canal Co., 150 Pa. 245 (1892); Com. v. N. Y., L. E. & W. R. R. Co., 129 Pa. 463 (1889); Same Parties, 150 Pa. 234 (1892); Same Parties, 145 Pa. 57 (1891).

⁴⁹New York, L. E. & W. R. R. Co. v. Com., 153 U. S. 628 (1894), reversing 145 Pa. 57; Del. & Hud. Canal Co. v. Pa., 156 U. S. 200 (1894).

"The Commonwealth is not concerned with the agreement between the mortgagor company and its creditor, nor can the parties by contract avoid the clear and positive terms of the statute."⁵⁰

A corporation assuming to pay the tax on its obligations does not undertake to pay the same on the total amount thereof, but only on so much thereof as is properly subject to taxation, but the Commonwealth is not, in such case, concluded by the failure of the treasurer of the corporation, after diligent search, to ascertain the residences of the holders of its obligations, and the Commonwealth may produce for taxation any lawfully taxable bonds which the treasurer of the corporation has failed to find and settle tax thereon, together with tax on the obligations returned by the treasurer as taxable.⁵¹

§ 836. Penalty for failure to report, assess and pay tax.⁵² The fact that the accounting officers did not claim the ten per centum penalty for failure to assess and pay tax and make reports, and the account settled against a corporation for tax on loans, from which settlement an appeal was taken, and thus the question of the liability therefor was not raised in the court below, will not prevent the Supreme Court from including the penalty in the judgment, on appeal.⁵³

Where, however, a treasurer of a corporation had assessed the tax and made the report as required by said section, but had not in fact paid the interest from which the taxes were to be deducted by him, held, that this was not such a default on the part of the corporation as to authorize the imposition of the penalty.⁵⁴

The Act of 1885 makes the treasurer of a corporation the collector of the tax. His default is that of the company. The part of the Act of 1885 which visits on the corporation a penalty for the failure or neglect of the treasurer to collect the tax is penal.⁵⁵

§ 837. Payment of tax on bonds of corporations in hands of receivers. When a corporation is in the hands of receivers, and its treasurer is also the treasurer of the receivers it is clearly his duty to assess the tax upon the company's bonds on

⁵⁰Com. v. Jarecki Manufacturing Co., 204 Pa. 36 (1902).

⁵¹Com. v. Northern Central R. R. Co., 2 Dauph. Co. Rep. 67 (1897).

⁵²See § 822.

⁵³Com. v. Phila. & Read. C. & I. Co., 145 Pa. 283 (1891).

⁵⁴Com. v. Phila. & Read. C. & I. Co., 145 Pa. 283 (1891).

⁵⁵Com. v. Wilkes-Barre & Scranton R. R. Co., 162 Pa. 614 (1894).

the payment by the receivers of interest thereon, and, if such assessments are made by the treasurer, it will be the duty of the receivers to pay the tax to the Commonwealth; and, if the treasurer makes default in the assessment of the tax, the corporation is responsible therefor, and an account for the tax may be properly settled against it.⁵⁶

§ 838. Corporate loans exempt from taxation. The following is a recapitulation of the classes of corporate loans which are not taxable:

I. Obligations held in their own right by corporations paying a capital stock tax, when the whole body of stockholders or members as such have the entire equitable interest in such obligations in remainder.⁵⁷

II. Obligations held by national banks, and by state and savings banks paying the four-mill tax on or before March first in each year.⁵⁸

III. Notes discounted or negotiated by banks, savings institutions or trust companies;⁵⁹ but not notes discounted by private bankers or unincorporated banks.⁶⁰

IV. Obligations held by non-residents of Pennsylvania in their own right,⁶¹ and obligations held by persons whose residences after a diligent inquiry therefor cannot be ascertained.⁶²

V. Obligations held and owned by institutions of purely public charity.⁶³

VI. Obligations held and owned by building and loan associations given them by their own members.⁶⁴

VII. Obligations on which no interest has been paid or earned during the tax year, from which the tax could have been deducted.⁶⁵

VIII. Promissory notes given for current indebtedness.⁶⁶

IX. Obligations held by trust companies collecting and paying the tax on their stock on or before the first day of March in each year.⁶⁷

X. Moneys owing by corporations upon articles of agreement

⁵⁶Com. v. Phila. & Read. C. & I. Co., 137 Pa. 481 (1890).

⁵⁷See § 797.

⁵⁸See § 831.

⁵⁹See § 832a.

⁶⁰See § 832a.

⁶¹See § 831.

⁶²See § 830.

⁶³See §§ 67 to 75.

⁶⁴See § 822.

⁶⁵See § 834.

⁶⁶See § 832a.

⁶⁷See § 831.

for the purchase of land,⁶⁸ which articles of agreement are taxable in the hands of the obligees.

§ 839. **Reports and settlements.** Blanks upon which to make reports of corporate loans are sent to the treasurers of all corporations subject to the tax, by the auditor general, about the first of November of each year. As already above stated, the tax year for the loan tax does not expire, under the decisions of the courts, until December 31st in each year. The tax year for capital stock, however, ends on the first Monday of November in each year, and as capital stock report blanks have to be sent out at or near that time, and as all domestic companies subject to the capital stock tax (except limited partnership and joint-stock associations) also pay the tax on loans, it is more convenient to send the loan tax blanks with, and at the same time as, the capital stock report blanks.

Reports of loans must be made by a company, for each year, whether it has any loans outstanding for such year or not. If it has none, the treasurer thereof should so report, under oath, on the blank, it being as necessary that the records of the auditor general's department should show why a company is *not* taxed on loans for a given year as that it should appear therefrom why it is taxed for another year.

The fourth section of the Act of June 30, 1885, provides, as we have seen, that the treasurer of every private corporation shall "assess the tax . . . upon the nominal value of each and every said evidence of debt." That is, he is to determine the value thereof, and in so doing he shall determine such value to be the nominal value of the same; which is an odd kind of "assessment." The provision was inserted in the act, however, to meet the objections of the Supreme Court to the loan tax provisions of the previous Acts of 1879 and 1881, referred to at the beginning of this chapter. In fact, all that the treasurer of a company has to do is to return the obligations of his company, giving the face value thereof, instead of the actual value.

Upon the return of the reports to the auditor general's department, settlements are made on the basis thereof against the corporations for which the reports are made, respectively, and not against the treasurers thereof, and copies of the settlements are mailed to the treasurers of the companies so reporting. A com-

⁶⁸Com. v. Penn. Tanning Co., 2 Dau. Co. Rep. 55 (1899).

pany can appeal from such settlement at any time within sixty days after the receipt of the copy of the settlement. Failing to do this within said time, the settlement becomes final. Payment of the tax is not demanded until the said sixty days have expired.

§ 840. Treasurer's commission for collecting the tax.

The 4th section of the Act of June 30, 1885, *supra*, provides that the compensation of the treasurers of corporations for collecting the tax on corporate loans, by deducting it from the interest paid on corporate obligations, and paying the same into the state treasury, shall be "the same that city and borough treasurers receive for similar services," which is⁶⁹ five per cent. on the first thousand dollars of tax, one per cent. upon the second thousand dollars thereof, and one-half of one per cent. upon all taxes in excess of two thousand dollars. Thus, the commission on a tax amounting in the gross to three thousand dollars would be fifty dollars, plus ten dollars plus five dollars, or sixty-five dollars. The amount of this commission is retained by the treasurers of corporations in making their remittances in payment of the tax, and the tax is settled on the net amount, with the commission deducted.

§ 841. Procedure where corporate loans are returned by the holders thereof, by mistake, to local assessors.

The loans of private corporations being made a separate subject of taxation, are removed from the class of personal property subject to taxation in the hands of the holders thereof, and such obligations should not, therefore, be returned to the local assessors for assessment for the payment of the state tax on personal property.⁷⁰ It frequently happens, however, that such obligations are thus returned, with the result that the holders thereof are taxed twice on the same obligations; once through the collectors of the state tax on personal property and once through the deduction of the tax from the interest paid to them by the treasurers of the corporations issuing the obligations.

The only remedy that can be found in such a case is, to make application for exoneration to the proper board of county commissioners, before they have made their return of the personal property in their county subject to taxation to the Board of Revenue Commissioners at Harrisburg. This return is usually made

⁶⁹See § 851.

⁷⁰See § 824a.

early in July of each year. Before it is made, the county commissioners may grant exoneration to the taxable, without any loss to the county or any one else. After the return of the county commissioners has been made to the Board of Revenue Commissioners, however, the exoneration can be granted only at the expense of the county, as the full amount of tax is required from the county on all the personal property returned by its commissioners as taxable.

The payment to the county authorities cannot be accepted by the state in lieu of the lawful payment through the treasurers of the corporations issuing the obligations, by deducting the tax from the interest paid on them, because, under the provisions of the Act of 1891, three-fourths of the state tax on personal property is returned to the counties collecting it. If, therefore, parties were allowed to pay the tax on the obligations of private or public corporations held and owned by them, to the local authorities, instead of permitting the tax thereon to be collected by being deducted from the interest paid them on such obligations, by the treasurers of the companies issuing them, the state would lose just three-fourths of the tax, whereas it is entitled to the whole amount thereof.

This being the case, if taxables include the obligations of public or private corporations in their returns made to the local assessors, they will not be relieved from the payment of the tax on the same obligations in the lawful manner, viz, by having the tax deducted from the interest paid them thereon; and, unless they can obtain exoneration from the proper county commissioners, they will thus be taxed twice on the same obligations.

Treasurers of corporations should take notice that the fact that the holders of any of their obligations have returned the same to the local assessors with their other personal property, will not relieve such treasurers from the duty of collecting the tax on the same obligations in the manner prescribed by law, viz, by deducting it from the interest paid thereon.

Where no interest is paid, however, on corporate obligations, and the taxable knows, when making his return of personal property to the local assessor, that no interest has or will be paid thereon during the tax year for which he makes his said return, he should, in that case *only*, include in such return of personal property the said obligations of private corporations, at their actual value, on which no interest has or will be paid. If there

is, however, any doubt upon the question, he should not so return them.

§ 842. **Miscellaneous.** Three street railway companies, contemplating a lease of their lines to a fourth company, had their stockholders deposit their stock with a trustee who issued certificates therefor to the stockholders. Subsequently, leases were executed under the terms of which the lessor company agreed to pay as rental a net sum equal to a certain per cent. upon the amount of said certificates. These rentals were paid to the lessee companies and by them to the trustee who paid them to the stockholders in the form of interest upon said stock trust certificates. Held, that the lessor company was not liable to the tax on corporate loans upon said stock certificates.⁷¹

In an action by a bondholder to recover tax alleged to have been illegally deducted by the treasurer of the corporation issuing the bonds from the interest paid thereon, the plaintiff is not required to prove his non-residence as a part of his case, but the burden is on the defendant corporation to establish the residence of the bondholder in Pennsylvania.⁷²

The tax on corporate loans imposed by § 4 of the Act of June 30, 1885, *supra*, did not go into effect until 1886, and did not apply for the portion of the year 1885 following the passage of said act, for the reason that the loans made taxable by the act had been returned by the holders thereof for the payment of the state tax on personal property for the year 1885, before the passage of said act.⁷³

⁷¹*Com. v. Union Traction Co.*, C. C. 353; *Com. v. Dunbar Furnace Co.*, 20 W. N. C. 171 (1887); 4 Pa. C. C. 349; *Com. v. Phila. R. & P. Teleg. Co.*, 2 C. Co., 5 Pa. C. C. 632 (1888).

⁷²*Hinchman v. Phila. & R. R. Co.*, 5 Pa. C. C. 632 (1888).
⁷³*Com. v. Lehigh Coal & Nav. Co.*, 20 W. N. C. 170 (1887); 4 Pa.

CHAPTER XXXVII.

TAX ON COUNTY, MUNICIPAL AND DISTRICT LOANS.

§ 843. Imposition of tax.

844. Nature of tax.

845. The tax is constitutional.

846. Rate of tax.

847. Loans in municipal sinking funds.

848. Loans on which no interest is paid are not taxable.

849. Tax on school bonds.

850. Reports of loans.

851. Treasurer's commission for collecting tax.

851a. Cities and counties are liable for payment of tax.

§ 843. **Imposition of tax.** County, municipal, borough, etc., loans are made a separate subject of taxation, and taxed, under the provisions of the following acts.

. . . It shall be the duty of the treasurer of each county, incorporated city, district, and borough of this Commonwealth, on the payment of any dividend or interest, to any holder or agent claiming the same, on any scrip, bond or certificate of indebtedness issued by said incorporated city, district, and borough aforesaid, to assess the tax herein made and provided for state purposes, upon the nominal value of each and every said evidence of debt; said tax to be deducted by the said treasurer on the payment of any interest or dividend aforesaid, and the same shall be held by him until paid over to the state treasurer; and the said treasurers shall be subject to the same penalties and liabilities now prescribed by existing laws in relation to taxes on bank dividends.¹

The treasurer of each county and city, the burgess or other chief officer of each incorporated district or borough of this Commonwealth, within ninety days after the passage of this act, shall make return, under oath or affirmation, to the auditor general, of the amount of scrip, bonds, or certificates of indebtedness, outstanding by said county, city, district, borough, or incorporation, as the same existed on the first day of January, one thou-

¹Sec. 42, Act of April 29, 1844, P. L. 501.

sand eight hundred and sixty-four, and of each succeeding year thereafter, together with the rates of interest thereon, at each of those periods, under the penalty of five thousand dollars, the amount to be settled by the auditor general, and the amount thereof sued for, and collected, as debts due by defaulting public officers are collected: Provided, that, on the receipt of said returns, the auditor general shall proceed to settle the accounts of each county, city, and borough with the Commonwealth, fix the state tax due and unpaid, and transmit notice of the amount, by mail, to officers making said returns; and that if the amount, so found due, shall not be paid within sixty days, the attorney general shall sue and collect the same, with interest from the date of such settlement; and hereafter it shall be the duty of the treasurer of every county, city, borough, and incorporated district in this Commonwealth, to deduct the said state tax on payment of any interest, or dividend, on debts due by the county, city, borough, or incorporated district, and pay the same over to the state treasurer, within thirty days after the said interest, or dividend, has fallen due.²

It will be noted that the foregoing 4th section of the Act of April 30, 1864, does not provide for any assessment of obligations for taxation, and is therefore subject to the same objections successfully made against the Acts of 1879 and 1881, relative to the taxation of the loans of private corporations. If, therefore, it repealed the 42nd section of the Act of April 29, 1844, *supra*, it would seem that there was no valid act for the taxation of municipal and other loans; but it has been held that said section of the Act of 1844 is not repealed by the 4th section of the Act of 1864,³ nor by the Act of June 7, 1879, nor that of April 2, 1846, P. L. 486.⁴

"The purpose of this act [§ 4 of the Act of April 30, 1864] probably was to supply the omission in the Act of 1844, § 42, of any provision requiring the treasurer of counties and cities to report to the auditor general the amount of indebtedness on which interest was paid and tax became due, so that he might know whether all the tax had been deducted and paid over to the state treasurer; and the failure to give

²Sec. 4, Act of April 30, 1864, v. Lehigh Valley R. R. Co., 104 Pa. L. 218. Pa. 106 (1883).

³Com. v. Chester City, 123 Pa. 626 (1888); Com. v. Phila. City & County, 157 Pa. 558 (1893); Com. v. Martin, 107 Pa. 185 (1884).

him express authority to settle accounts for the tax unpaid. The act is somewhat inartificially drawn, and the logical order perhaps is not carefully followed, but we think its intent and meaning is sufficiently plain. The last clause re-enacts § 42 of the Act of 1844. The first clause requires the treasurer of counties and cities, and the chief officers of boroughs, to make returns of the indebtedness outstanding on the preceding first day of January, and the middle clause provides, 'that on the receipt of said returns the auditor general shall proceed to settle the accounts of each county, city and borough with the Commonwealth, fix the state tax due and unpaid, and transmit notice of the amount by mail to the officers making said returns.' Briefly expressed, we think the meaning of the section is this: The treasurer is required, when he pays the interest, to deduct the tax and pay it over to the state treasurer within thirty days after the interest became due, and, at the end of the year, he is required to make return of the amount of indebtedness outstanding for the previous year; and on receipt of this return the auditor general is to settle an account against the city giving it credit, of course, for the tax paid over by the treasurer, and, if any remain unpaid, to 'fix the tax due and unpaid,' which the attorney general must sue for if not paid over in sixty days."⁶

§ 844. Nature of the tax. The tax on county and municipal loans is in all respects similar to the tax on corporate loans, considered in the previous chapter, and subject in all respects to the same exemptions.⁶

§ 845. The tax is constitutional.⁷

§ 846. Rate of tax. The tax being that "made and provided for state purposes" on bonds, mortgages and similar personal property, the rate thereof is four mills under the provisions of § 1 of the Act of June 8, 1891, P. L. 229,⁸ as amended by the Act of May 1, 1909, P. L. 298, on the nominal value of loans.⁹

§ 847. Loans in municipal sinking funds. Municipal loans purchased by the municipality issuing the same and held in its sinking fund are not taxable.¹⁰

§ 848. Loans on which no interest is paid are not taxable. As in the case of tax on corporate loans, no tax is pay-

⁶Com. v. Philadelphia City & County, 157 Pa. 558 (1893), op. court below, p. 564.

⁷See §§ 821 to 842.

⁸Com. v. Chester City, 123 Pa. 626 (1889); Com. v. Martin, 107 Pa. 205 (1884).

⁹See § 911, *infra*.

¹⁰See § 827.

¹¹Com. v. Martin, 107 Pa. 185 (1884); Com. v. Reading, 15 W. N. C. 529 (1880); Com. v. Southworth, 1 Dauph. Co. Rep. 402 (1884); 18 Phila. 593; Com. v. Allegheny City, 16 W. N. C. 316 (1885).

able on county and municipal loans for years during which no interest is paid thereon.¹¹

§ 849. **Tax on school bonds.** The rulings of the accounting officers heretofore have been uniformly to the effect that a school district was not an "incorporated . . . district" within the meaning of § 42 of the Act of April 29, 1844, *supra*, and that it was not the duty of the treasurers of such districts to deduct the tax on county and municipal loans from the interest paid on the bonds of such districts. It has been recently ruled by the attorney general, however,¹² that the bonds of school districts should be returned by the treasurers of such districts to the auditor general for taxation, instead of being returned by the holders thereof to the local assessors to be subjected to the state tax on personal property. As such bonds have, presumably, been returned to the local assessors for the year 1909, no report of such loans will be required until the end of the tax or calendar year, 1910, and, in the meantime, holders of such obligations should refrain from returning them to the local assessors for the year 1910.¹³

§ 850. **Reports of loans.** The duties of the treasurer of counties, municipalities and school districts are practically the same, in the matter of deducting the tax from the interest paid on the obligations issued by their counties, municipalities or school districts, and in the making of reports to the auditor general of the number, amount and character of such obligations, as the duties of the treasurers of private corporations in the collection of the tax on the obligations of their respective corporations and in the making of reports of such obligations. The authorities quoted, and the statements made in the preceding chapter, treating of the tax on corporate loans, are, therefore, applicable to the duties of such treasurers of counties, municipalities and school districts.

§ 851. **Treasurer's commission for collecting tax.** The treasurers of counties, cities, and boroughs receive the same commission for collecting the tax on the loans of their respective counties, cities, and boroughs as is paid, under the Act of June 30, 1885, to the treasurers of private corporations for performing this duty. The Act of April 15, 1834, P. L. 544, provided that:

¹¹Com. v. Allegheny City, 16 W. N. C. 316 (1885). See § 834.

¹²School District Bonds, 35 Pa. C. C. 606 (1908).

¹³See § 824a.

"Section 42. Each county treasurer shall be entitled to deduct from the gross amount of moneys received by him for the use of the Commonwealth, on each separate account he is required to keep and settle, a commission in the following proportions, viz: where the whole sum accounted for and paid into the state treasury, or otherwise, for the use of the Commonwealth, as directed by law, arising from either of the accounts specified in this act, does not exceed one thousand dollars, at the rate of five per cent.; when it exceeds that sum and does not exceed two thousand dollars, one per cent. for such excess over one thousand dollars, and on all beyond the sum of two thousand dollars, one-half of one per cent."

The tax on county, city, and borough loans was not created, as we have already seen, until the passage of the Act of April 29, 1844. The said act, creating the tax, provided for no compensation for the treasurers of the counties, cities, and boroughs collecting the same, but it seems to have been the practice from the beginning to pay county treasurers the commission, on the collection of this tax, provided for in the Act of 1834, above quoted, notwithstanding that the said Act of 1834 limited the payment of the commission to "accounts specified in this act," and, of course, the tax on county loans was not included amongst such accounts. The taxes on city and borough loans were settled at the same desk with the tax on county loans, and, in the course of time, without any special provision of law therefor, that the writer can find, the practice was established of paying to the treasurers of cities and boroughs the same commission for collecting the tax on the loans of their respective cities and boroughs that was paid to county treasurers for similar services, as above.

Neither the Act of April 29, 1844, nor that of April 30, 1864, relating to the tax on county and municipal loans, makes any provisions for the payment of this commission, the custom of paying which grew up as above stated.

When the Act of June 30, 1885, was passed, creating the existing tax on loans of private corporations, it required the payment to the treasurers of the corporations collecting the tax of the same compensation for their services "that city and borough treasurers receive for similar services." The Act of 1885, therefore, recognizes the practice of paying city and borough treasurers

this commission, and doubtless thus authorizes the practice to a sufficient extent.

§ 851a. **Cities and counties are liable for payment of tax.** In the collection of the tax on the loans of a city, the city treasurer is the agent of the city, and not of the Commonwealth, and unless the tax is paid to the state treasurer, the city is liable for the loss of it occasioned by the misconduct of the city treasurer.¹⁴

A city collected the tax on its loans and paid it over to the city treasurer. For the whole year during which the money was received, and was due and payable to the Commonwealth, and for more than four months afterwards, during which the treasurer was in office, not a single quarterly return or payment, as required by law, was requested or exacted by the Commonwealth's officers. Held, that interest on the tax at twelve per centum should be lowered to six per centum, and that the attorney general's fee on the tax settlement should be stricken off, these amounts being considered as penalties.¹⁵

¹⁴Com. v. Phila. City & County,
157 Pa. 558 (1893).

¹⁵Com. v. Phila. City & County,
157 Pa. 558 (1893).

CHAPTER XXXVIII.

TAX ON GROSS RECEIPTS OF TRANSPORTATION, TRANSMISSION AND ELECTRIC LIGHT COMPANIES.

- § 852. History.
- 853. Imposition of the tax.
- 854. Nature of the tax.
- 855. Tax payable semi-annually—Reports—Penalty for failure to make reports.
- 856. Apportionment of tax in case of leased works.
- 857. Receipts derived from interstate commerce not taxable.
- 858. Receipts of foreign corporations.
- 859. Receipts of telegraph companies.
- 860. Receipts derived from the transportation of United States mails.
- 861. Receipts of companies in hands of receivers.
- 862. Receipts of palace car and similar companies.
- 863. Receipts from tolls are not taxable.
- 864. Receipts of electric light companies.
- 865. Tax on gross receipts of express companies.
- 866. Receipts of pipe line and slack water navigation companies.

§ 852. **History.** The tax on gross receipts was first imposed by the second section of the Act of February 23, 1866, P. L. 82, which provided that every railroad, canal and transportation company, incorporated under the laws of this Commonwealth, "and not liable to the tax on income under existing laws,"¹ should pay a tax to the Commonwealth of three-fourths of one per centum upon the gross receipts of said company, the receipts from which tax were, under the provisions of § 3 of said act, to be applied to the payment of the principal and interest of the state debt.

There evidently having been some question as to what corporations were "not liable to the tax on income under existing laws," the second section of the Act of July 19, 1866, P. L. (1867), 1363, provided that the second section of the Act of February 23, 1866, *supra*, "shall be construed to apply to all

¹Express companies were the only transportation companies subject to the tax on net earnings or income. Sec. 2, Act of April 30, 1864, P. L. 218. See § 889, *infra*.

railroad, canal, and transportation companies not liable to taxation on net income in pursuance of the second section of the Act of April 30, 1864."

The 16th section of the Act of May 1, 1868, P. L. 108, repealed the second section of the Act of February 23, 1866, *supra*, and the 8th section of said act reimposed the tax on gross receipts on every railroad, canal and transportation company "liable to tax upon tonnage under the preceding section of this act." The companies so made liable to tax on tonnage were "every railroad company, steamboat company, canal company and slack water transportation company and all other companies now or hereafter doing business in this state and upon whose works freight may be transported . . . except turnpike, plank road and bridge companies."

The tax was abolished by § 3 of the Act of March 21, 1873, P. L. 46, and § 11, Act of April 24, 1874, P. L. 68. The tax on gross receipts was, however, revived by § 5 of the Act of March 20, 1877, P. L. 6, which provided:

"That every railroad company or canal company, steam-boat company, slack water navigation company, transportation company, street passenger railway company, and every other company now or hereafter incorporated, by or under any law of this Commonwealth, or now or hereafter incorporated by any other state and doing business in this Commonwealth, and owning, operating or leasing to or from another corporation or company any railroad, canal, slack water navigation, or street passenger railway or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers; and every telegraph company incorporated under the laws of this or any other state and doing business in this Commonwealth; and every express company and any palace car and sleeping car company, incorporated or unincorporated, doing business in this Commonwealth"

should pay to the Commonwealth a tax of eight mills upon its gross receipts from tolls and transportation, telegraph business or express business.

The fifth section of the Act of March 20, 1877, *supra*, was superseded by the seventh section of the Act of June 7, 1879, P. L. 112, which practically re-enacted the provisions of the prior act, and added to the classes of corporations subject to the tax, pipe line and conduit companies, and limited partnerships engaged in transportation.

The foregoing seventh section of the Act of June 7, 1879, was

repealed by the 36th section of the Act of June 1, 1889, P. L. 420, the 23rd section of which act practically re-enacted the provisions of the said repealed section, and added telephone² and electric light companies to the classes of corporations subject to the tax, and limited the taxable receipts to those "received from passengers and freight transported wholly within this state and from telegraph, telephone or express business done wholly within this state or from the business of electric light companies and from transportation of oil done wholly within the state."

The tax on gross receipts is now imposed under the said 23rd section of the Act of June 1, 1889, which is given in the following section.

§ 853. Imposition of the tax. Every railroad company, pipe-line company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, street passenger railway company, and every other company, joint stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and owning, operating, or leasing to or from another corporation, company, association, joint stock association, or limited partnership, any railroad, pipe line, slack water navigation, street passenger railway, canal, or other device for the transportation of freight or passengers or oil, and every telephone or telegraph company incorporated under the laws of this or any other state or of the United States and doing business in this Commonwealth, and every express company, incorporated or unincorporated, doing business in this Commonwealth, and every firm, copartnership, or joint stock company or association doing express business in this Commonwealth, and every electric light company and every palace car and sleeping car company, incorporated or unincorporated, doing business in this Commonwealth, shall pay to the state treasurer a tax of eight mills upon the dollar upon the gross receipts of said corporation, company or association, limited part-

²Prior to the specific mention of telephone companies in this act, it was held that they were subject to the tax on gross re-

ceipts as "telegraph companies." *Com. v. Penna. Telephone Co.*, 2 *Dau. Co. Rep.* 57 (1885).

nership, firm or copartnership, received from passengers and freight traffic transported wholly within this state, and from telegraph, telephone, or express business done wholly within this state, or from business of electric light companies, and from the transportation of oil done wholly within the state; . . .³

§ 854. Nature of the tax. The tax is probably one on the business of the corporations subject thereto. In *State Tax on Railway Gross Receipts*, 15 Wall. 284 (1872), the Supreme Court held that receipts from all sources might be taxed because (a) the receipts had passed into the general property of the companies subject to the tax, and (b) the tax was upon the franchises of transportation companies, but, in a later case the same court said:

"A review of the question convinces us that the first ground . . . is not tenable. . . . It certainly could not have been intended as a tax on the corporate franchise, because by the terms of the act it was laid equally on the corporations of other states doing business in Pennsylvania. If intended as a tax on the franchise of doing business—which, in this case is the business of transportation in carrying on interstate and foreign commerce—it would clearly be unconstitutional."⁴

That it is not a property tax is evident from the fact that the receipts derived from traffic within Pennsylvania of foreign corporations doing business within the state are taxable, though such receipts may not be within the state.⁵

§ 855. Tax payable semi-annually—Reports—Penalty for failure to make reports. . . . the said tax shall be paid semi-annually upon the last days of January and July in each year; and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, firm, copartnership, limited partnership, joint stock association, or corporation, to transmit to the auditor general a statement, under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, joint stock associations, or limited partnerships derived from all sources, and of gross receipts from business done wholly within the state, during the preceding six months ending on the

³Sect. 23, Act of June 1, 1889, P. L. 420.

⁴*Phila. & South. M. S. S. Co. v. Pa.*, 122 U. S. 326 (1887).

⁵*Com. v. Lehigh Valley R. R. Co.*, 22 W. N. C. 525 (1888); 1 *Mona.* 36; *Western Union Tel. Co. v. Com.*, 110 Pa. 405 (1885).

first days of January and July in each year; and if any such company, firm, copartnership, joint stock association, association, or limited partnership or corporation shall neglect or refuse, for a period of thirty days after such tax becomes due, to make said returns or to pay the same, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the Commonwealth as other taxes are recoverable by law; . . .⁶

Blanks upon which to make reports of gross receipts are sent semi-annually to the treasurers of the corporations subject to the tax, on or about the 30th of June and the 31st of December in each year. The reports are required to be made and filed within thirty days from said June 30th and December 31st, respectively. The act requires that the tax shall be paid semi-annually upon the last days of January and July in each year, and if the report is not made "for a period of thirty days after such tax becomes due"—that is, within thirty days from the last days of July and January, in each year, respectively—"the amount thereof, with an addition of ten per cent. thereto, shall be collected for the use of the Commonwealth as other taxes are recoverable by law."

According to the foregoing, a corporation need not make its report until thirty days after the tax becomes due. The reports are to be made for the periods ending June 30th and December 31st, respectively; the tax is due on the last days of July and January, respectively, and no penalty for neglect to report can be imposed until September 1st and March 1st. The practice is, however, to require the reports to be made by July 30th and January 31st in each year, and not to require payment of the tax until settlements therefor have been made, and the usual period for taking an appeal has expired.

In default of reports, estimated settlements, with fifty per centum penalty, can be made under the Act of March 30, 1811.

§ 856. Apportionment of tax in cases of leased works.

. . . Provided, that in any case where the works of one corporation, company, joint stock association, or limited partnership are leased to and operated by another corporation, company, association, or limited partnership, the taxes imposed by this section shall be apportioned between the said corporations, companies, associations, or limited partnerships in accordance with

⁶Sec. 23, Act of June 1, 1889, P. L. 420.

the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, association, or limited partnership operating the works, and upon the payment by the said company, corporation, association, or limited partnership of a tax upon the receipts as herein provided, derived from the operation thereof, the corporation, company, joint stock association, or limited partnership from which the said works are leased, shall not be held liable under this section for any tax upon the proportion of said receipts received by it as rental for the use of said works.⁷

The foregoing provision does not apply to express companies which employ railroad companies to do their transportation.⁸

Companies whose roads, lines, or works are leased to and operated by other companies should, nevertheless, continue to make regular semi-annual reports, which should set forth substantially as follows:

"The A. B. Company has leased its road (lines or works) to the C. D. Company for the term of ——— years, and its gross receipts for the six months ended ——— are included in the gross receipts of the said C. D. Company, as set forth in its report of gross receipts for the said period."

Such reports show why no tax is settled against the company for the period for which it is leased, and indicate to the accounting officers the continuance of the lease, as well as show when it terminates.

§ 857. Receipts derived from interstate commerce not taxable. The receipts taxable under the 23rd section of the Act of June 1, 1889, *supra*, are limited by the terms of said section to those derived from transportation of passengers and freight traffic carried on wholly within this state, and other receipts from business done wholly within the state.

The act was so drawn to comply with the ruling of the Supreme Court of the United States that receipts from interstate traffic were not taxable.

It was originally held by the said court⁹ that the receipts of

⁷Sec. 23, Act of June 1, 1889, P. L. 420.

⁸State Tax on Gross Receipts, 15 Wallace 284 (1872).

⁹Com. v. United States Express Co., 157 Pa. 579 (1893).

transportation corporations from all sources were taxable by Pennsylvania for two reasons:

"First, because the receipts had passed into the general property of the company and had thus lost their distinctive character as freight earned for transportation, and second, because the tax was held to be upon the company's franchise and to be only measured by the amount of its business as shown by its receipts."¹⁰

The ruling of the Supreme Court in the above cited case was followed by the Supreme Court of Pennsylvania in several cases.¹¹

The Supreme Court of the United States, however, subsequently abandoned the position originally assumed by it and held that receipts derived from interstate commerce might not be taxed.¹²

The receipts from transportation by continuous carriage between points both of which are in Pennsylvania, however, are subject to taxation by said state, although while in transit the freight and passengers are carried out of the state and in again.¹³

When property destined to a point outside of the state is in the custody of the carrier, and transportation is actually begun, interstate commerce has begun, and during a temporary stoppage within the state, which is not an abandonment of the original movement, the article is as fully protected from taxation as when in motion on the cars.¹⁴

The gross receipts of a ferry company operating only between states may not be taxed by the states between which it operates.¹⁵

¹⁰Com. v. Del. & Hud. Canal Co., 21 W. N. C. 406 (1888).

¹¹Phila. & S. M. S. Co. v. Com., 104 Pa. 109 (1883); Pullman's Palace Car Co. v. Com., 107 Pa. 148 (1884); Western Union Teleg. Co. v. Com., 110 Pa. 405 (1885).

¹²Phila. & S. M. S. Co. v. Com., 122 U. S. 326 (1887), overruling Same Title, 104 Pa. 109 (1883); Western Union Teleg. Co. v. Penna., 128 U. S. 39 (1888), reversing Same Title, 110 Pa. 405 (1885); Fargo v. Mich., 121 U. S. 230 (1887). See Com. v. Lehigh

Valley R. R. Co., 22 W. N. C. 525 (1888); 1 Mona. 36.

¹³Com. v. N. Y., L. E. & W. R. R. Co., 21 W. N. C. 410 (1888); Lehigh V. R. R. Co. v. Penna., 145 U. S. 192 (1892), overruling Com. v. Lehigh Valley R. R. Co., 129 Pa. 308 (1889); Com. v. Lehigh Valley R. R. Co., 4 Dauph. Co. Rep. 174 (1881).

¹⁴Com. v. Lehigh Valley R. R. Co., 22 W. N. C. 525 (1888); 1 Mona. 36.

¹⁵Gloucester Ferry Co. v. Penna., 114 U. S. 218.

§ 858. **Receipts of foreign corporations.** The receipts of foreign corporations derived from traffic carried on wholly within the state are taxable precisely the same as those of domestic corporations, similarly derived;¹⁶ and this though such receipts may have been turned into the treasury of the corporation at the place of its domicile outside of Pennsylvania.¹⁷

§ 859. **Receipts of telegraph companies.** Telegraph companies whether foreign or domestic are taxable only on so much of their receipts as is derived from messages sent from one point in the state to another.¹⁸

§ 860. **Receipts derived from the transportation of United States mails.** Gross receipts derived from the transportation of the United States mails are not taxable.¹⁹

§ 861. **Receipts of companies in the hands of receivers.** The fact that a company is in the hands of a receiver appointed by a United States court does not release it from a tax on gross receipts, although said tax was assessed in the name of the corporation alone.²⁰

§ 862. **Receipts of palace car and similar companies.** The gross receipts of the Pullman Palace car and similar companies are taxable as follows:

They return separately or in different schedules the receipts derived from transportation between places in Pennsylvania and other places in the same state, and in another schedule such receipts as are earned by the cars whose trips are not confined to the state, but are extended beyond the borders of Pennsylvania, or, beginning without the state, pass through or terminate in it.

¹⁶Com. v. Lehigh Valley R. R. Co., 22 W. N. C. 525 (1888); 1 Mona. 36, affirming Com. v. Del. & Hud. Canal Co., 21 W. N. C. 406 (1888); Pullman's Palace Car Co. v. Com., 107 Pa. 148 (1884).

¹⁷Western Union Teleg. Co. v. Com., 110 Pa. 405 (1885). See Western Union Teleg. Co. v. Penna., 128 U. S. 39 (1888), reversing the foregoing case, but maintaining the taxability of proper receipts from proper sources located outside of the State.

¹⁸Western Union Teleg. Co. v. Penna., 128 U. S. 39 (1888), reversing Western Union Teleg. v. Com., 110 Pa. 405 (1885).

¹⁹Com. v. Lehigh Valley R. R. Co., 4 Dauph. Co. Rep. 174 (1889); Com. v. Del. Lack. & W. R. R. Co., 21 W. N. C., 412 (1888).

²⁰Phila. & Read. R. R. Co. v. Com., 104 Pa. 86 (1883); 13 W. N. C. 478; Com. v. Buffalo & N. Y. & Phila. R. R. Co., 2 Dauph. Co. Rep. 216 (1888).

Tax is settled upon the full amount of receipts earned wholly within the state, so returned, whether earned by cars running only within the state or by those engaged in interstate commerce. So long as the traffic is carried on wholly within the state, it makes no difference whether the cars earning the receipts are engaged in interstate commerce or run only within Pennsylvania. The fact that a car runs between states, does not make interstate traffic of so much of the traffic carried on by it as is limited to the territory of a given state.

§ 863. Receipts from tolls are not taxable. Under the provisions of § 7 of the Act of June 7, 1879, P. L. 116, it was held that amounts received by one railroad company for the use of its tracks within this state by another railroad company, for transportation either within or through the state, were taxable as gross receipts for tolls, and that, as the receipts from transportation by the company paying the tolls were taxable against that company, and the tolls were taxable against the company receiving them, it was not double taxation, nor, as the tracks for the use of which the tolls were paid lay wholly within Pennsylvania, was it a question of interstate commerce.²¹

The 23rd section of the Act of June 1, 1889, *supra*, however, omits tolls from the receipts made taxable thereby, and hence, under said act, receipts from tolls are not taxable.²²

Moneys received by a railroad company for the use of its tracks by the trains of another company, computed at the rate of so much for each ton of freight and for each passenger carried, are not rents, nor receipts from passengers and traffic, but receipts from tolls, and hence not taxable under the provisions of the 23rd section of the Act of June 1, 1889.²³

§ 864. Receipts of electric light companies. Electric light companies were first made subject to the tax on gross receipts by the 23rd section of the Act of June 1, 1889, the 21st section of which act relieved their competitors in business, artificial gas companies, from the payment of the tax on capital stock, to which electric light companies were then and still are subject.²⁴

²¹Com. v. N. Y., P. & O. R. R. Co., 145 Pa. 38 (1891).

²²Com. v. N. Y., L. E. & W. R. R. Co., 145 Pa. 200 (1891).

²³Com. v. N. Y., L. E. & W. R. R. Co., 145 Pa. 200 (1891).

²⁴See § 807.

Electric light companies are taxable not only on receipts derived from the furnishing of electric light, but upon all of their receipts derived from their general business conducted under their franchises, such as receipts from the sale of steam, electric supplies, scrap and other material,²⁵ but the receipts of such companies derived from rents, interest on bank balances, rebates on freight, etc., are not taxable.²⁶

§ 865. Tax on gross receipts of express companies. The gross receipts of express companies and "every firm, co-partnership or joint stock company or association doing express business in this Commonwealth," were taxable under the provisions of § 23 of the Act of June 1, 1889.

By the 3rd section of the Act of July 15, 1897, P. L. 291, a special and additional tax, called "an annual excise tax for the privilege of exercising its franchises in this state," was imposed upon the gross receipts of every express company. The gross receipts of express companies were, therefore, subject to two separate, specific taxes. The said 3rd section of the Act of July 15, 1897, was, however, repealed by the Act of April 28, 1899, P. L. 72, which act, instead of simply repealing the said 3rd section of the Act of 1897, thus leaving the receipts of express companies subject to the tax on gross receipts under the provisions of the 23rd section of the Act of June 1, 1889, *supra*, provided specifically for the taxation of such gross receipts, and that no other tax upon express receipts should be collected.

The receipts of express companies are, therefore, now taxable under the provisions of the following Act of April 28, 1899, P. L. 72, which act, as will be noticed, is practically a re-enactment of the 23rd section of the Act of June 1, 1889, but is confined in its operation to the gross receipts of express companies.

Every corporation, limited partnership, joint stock association, partnership, firm or association of individuals, incorporated or unincorporated, engaged in the business commonly known as express business, shall pay to the state treasurer, for the use of the Commonwealth, a tax of eight mills upon the amount of their gross receipts from express business done wholly within this state; the said tax shall be paid semi-annually upon the last days

²⁵Com. v. Brush Electric Light Co., 204 Pa. 249 (1903); Com. v. New Castle Electric Co., 5 Dau. Co. Rep. 89 (1902); 11 D. R. 389.

²⁶Com. v. Brush Electric Light Co., 204 Pa. 249 (1903); Com. v. New Castle Electric Co., 5 Dau. Co. Rep. 89 (1902); 11 D. R. 389.

of January and July in each year; and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said corporation, limited partnership, joint stock association, partnership, firm or association of individuals, to transmit to the auditor general a statement under oath or affirmation, of the amount of gross receipts of the said corporation, limited partnership, joint stock association, partnership, firm or association of individuals, incorporated or unincorporated, derived from all sources, and of the gross receipts from business done wholly within the state, during the preceding six months ending upon the first days of January and July in each year; and if any such corporation, limited partnership, joint stock association, partnership, firm or association of individuals, incorporated or unincorporated, shall neglect or refuse for a period of thirty days after such tax becomes due to make said returns, or to pay the said tax, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the Commonwealth as other taxes are recoverable by law. No other tax upon express receipts, or upon the privilege of transacting express business, shall be collected without further authority of law to be hereafter enacted: Providing, that this act shall not be construed to repeal or take the place of the tax upon capital stock now imposed by law; but the tax on gross receipts hereby imposed shall be in addition to the tax on capital stock imposed by existing law upon any of the corporations, companies or associations hereby taxed.²⁷

Express companies are taxable upon the whole of their gross receipts, and not merely on so much thereof as remains after deducting therefrom the amounts paid to railroad companies for transportation. Such taxation does not amount to double taxation, although the amounts paid by express companies to railroad companies are included in the gross receipts of the railroad companies and taxed as such.²⁸

The provision in the 23rd section of the Act of June 1, 1889, for the adjustment of taxes in certain cases does not apply to express companies which employ railroad companies to do their transportation.²⁹

²⁷Sec. 2, Act of April 28th, 1899, P. L. 72.

²⁸Com. v. U. S. Express Company, 157 Pa. 579 (1893).

²⁹Com. v. U. S. Express Company, 157 Pa. 579 (1893).

§ 866. Receipts of pipe line and slack water navigation companies. The receipts of pipe-line companies are expressly made subject to taxation by the Act of June 1, 1889, *supra*, but prior to the passage of said act it was held that, under the Act of March 20, 1877, such companies were engaged in the transportation of freight within the meaning of the said act.³⁰

Slack water companies are also specifically taxable under the Act of 1889, and, under the Act of May 1, 1868, they were held to be taxable as transportation companies.³¹

³⁰*Columbia Conduit Co. v. Com.*,
90 Pa. 307 (1879).

³¹*Com. v. Monongahela Nav.*
Co., 66 Pa. 81 (1870).

CHAPTER XXXIX.

TAXATION OF BANK STOCK.

§ 867. History.

- 868. Banks to make reports—Auditor general to settle tax—Basis of settlement.
- 869. Settlements to be posted in banks—Tax payable forty days after date of settlement.
- 870. Penalty for failure to report and to post settlements in banks.
- 871. Exemptions gained by paying four-mill tax on or before March first.
- 872. Optional ten-mill tax on par value of stock—Exemptions.
- 873. Liability of bank shares to further taxation in the hands of the holders.
- 874. Taxation of national banks.
- 875. Real estate of banks taxable locally.
- 876. Capital stock of banks invested in United States bonds.
- 877. Reports.
- 878. Banks subject to municipal licenses.

§ 867. **History.** Banks were the first class of corporations selected for taxation in this Commonwealth, and since the passage of the Act of May 21, 1814, the method of taxing bank dividends, and, finally, the stock of banks, has been completely revolutionized several times. No other state tax in existence has been so modified and complicated by different enactments. Other taxes have been modified, but the whole system of bank taxation has been completely revolutionized again and again, as will appear from the following.

The first act imposing a tax upon banks as a separate object of taxation is that of May 21, 1814, P. L. 169, which required the officers of all banks, on the first Monday of November in each year, to transmit six per cent. of the whole amount of the dividends which shall have been declared on said date and during the year preceding, to the state treasurer, for the use of the Commonwealth, "and, if the said bank shall, at any time, be exempted from the payment of tax or duty to the United States, then and during such exemption, an additional sum of two per cent. on the dividends of each bank shall be transmitted, as afore-

said, to the state treasurer for the use of the Commonwealth." This act was, primarily, for the incorporation and regulation of banks. Of this act Mr. T. K. Worthington, in his *Historical Sketch of the Finances of Pennsylvania*, says that it was passed for the purpose of restraining existing abuses rather than to increase the revenue.

The Act of April 1, 1835, P. L. 99, provides that the several banks in this Commonwealth now subject by law to the payment of a tax on their dividends shall hereafter pay into the treasury of this Commonwealth, in the manner now directed by law, eight per cent. on all dividends which do not exceed six per cent. per annum; nine per cent. on all dividends exceeding six and not exceeding seven per cent. per annum; ten per cent. on all dividends exceeding seven and not exceeding eight per cent., and eleven per cent. on all dividends exceeding eight per cent. per annum.

Banks were also made subject to the capital stock tax imposed by the Acts of June 11, 1840, P. L. 612, and April 29, 1844, P. L. 486. The tax on capital stock was *in addition to* the tax on dividends imposed by the Act of 1835, as is apparent from the sixth section of the Act of April 16, 1845, P. L. 507, which provides that the thirty-third section of the Act of 1844 (which imposes the tax on capital stock) shall not be construed to release the banks and savings institutions of this Commonwealth from the payment of a tax on their dividends, respectively, according to the provisions of the several laws in force at the time of the passage of said act.

The Act of March 15, 1849, P. L. 168, amended the Act of 1835, imposing a tax on dividends, by increasing the rate per cent. to be paid on the amount of dividends declared.

The 21st section of the Act of April 16, 1850, P. L. 457, provided that banks organized under the provisions of the said act should pay a tax on dividends at the rate therein specified. The 46th section of said act imposed a further tax of four and one-half mills per annum on the capital stock, which tax was in lieu of the tax on capital stock imposed by the Act of April 29, 1844.

The Act of April 27, 1852, P. L. 443, repealed the 46th section of the Act of April 16, 1850, and provided that the provisions of the Act of April 29, 1844, P. L. 486, relative to the tax on cap-

ital stock, should be applicable to all banks.¹ The Act of April 12, 1859, P. L. 529, included banks and savings institutions among the corporations subject to the payment of the tax on capital stock imposed thereby.

The Act of March 24, 1860, P. L. 250, provided that the Act of 1859 shall not be so construed that banks of deposit and discount or savings banks shall be liable to a tax upon dividends, and this would seem to repeal the 21st section of the Act of April 16, 1850, *supra*.

The Act of February 23, 1866, P. L. 82, exempted banks from all other taxation on their capital stock (*not* on their shares), and, in lieu thereof, imposed a tax of one per centum upon the par value of the stock, the cashier of each bank to collect the tax annually from each stockholder, and pay the same into the state treasury on or before the first of July in each year, beginning on July 1, 1866. This was practically re-enacted by the first section of the Act of July 19, 1866, P. L. 1867, 1363.

"It was not until after the passage of the Act of February 23, 1866, P. L. 82, that banks ceased to be the principal corporations subject to the tax on capital stock."²

The Act of April 12, 1867, P. L. 74, provided for the taxation of the *shares of stock* of national banks, repealed so much of the Act of February 23, 1866, as applied to the taxation of the *capital stock* of National banks, and was the first act providing for the taxation of National banks solely, *eo nomine*. The first section provided:

That all the shares of stock held by any person in any bank incorporated by or in pursuance of any law of the Government of the United States are hereby declared subject to taxation in the hands of the holders of such shares, at the same rate as the shares, or stock, of banks incorporated by, or under, any law of the Commonwealth of Pennsylvania, are now taxable, in the hands of the individual holders of such shares, and at no other, or greater, rate; that is to say, a tax of three mills upon every dollar of the value of such shares or stock shall annually be assessed and collected in the manner hereinafter provided.

¹*Allegheny Co. v. Shoenberger*, 1 Grant 35 (1853); *Mintzer v. Montgomery Co.*, 54 Pa. 139 (1867).

²*Com. v. N. Y., P. & O. R. R. Co.*, 188 Pa. 169 (1898), *op. of the court below*.

The second section provided that the auditor general and state treasurer might appoint a suitable number of citizens who should visit all the banks incorporated by the United States, and obtain from the officers thereof complete lists of their shareholders, with their residence, and number and par value of shares of stock held by each, whereupon each assessor should assess all the stockholders *in the district for which he was appointed*, and make a list of the same, which he should return to the commissioners of the city or county in which each bank should be located, and the tax should then be collected in the manner in which other tax on personal property was collected. The assessors were also required to make lists of the stockholders of the banks within their districts, *which stockholders resided in other districts*, with their residences and the number of shares held by each, and forward said lists to the auditor general, who, in turn, was required to notify the commissioners of the counties in which said stockholders were resident, respectively, and the tax was then to be collected as in the case of other personal property. Said assessors were to be appointed annually in the month of January.

The fifth section of the Act of 1867 provided that should any bank, national or state, pay to the state treasurer a tax of one per cent. per annum on the par value of its capital stock, the shareholders of the bank should be exempt from all other taxation on the value of said shares.

The Act of April 2, 1868, P. L. 55, somewhat modified the manner in which the assessors, provided for in the Act of 1867, should appraise the shares of national banks.

The Act of December 22, 1869, P. L. 1870, p. 1373, provided that the shares of stock of state and savings banks should be subject to the same tax, assessed and collected in the same manner, as was imposed upon the shares of stock of national banks by the Acts of April 12, 1867, and April 2, 1868. Section 3 of said act also gave the same right to pay a tax of one per cent. on the par value of all their shares, and thus obtain exemption from all other taxation on the said shares, capital, and profits, as was granted to national banks by said Acts of 1867 and 1868.

The Act of March 31, 1870, P. L. 42, provided for the re-funding of all taxes collected on the shares of banks which might have paid the tax of one per cent. on the par value of

all their shares of stock. It also provided that national banks should be taxable for county, school, municipal, and local purposes, at the same rate as other moneyed capital in the hands of citizens of the state.

Section 6 of the Act of June 10, 1881, P. L. 99, abolished the system of assessment created by the Act of 1867, and provided for taxation upon the basis of reports made to the auditor general. Banks, state or national, electing to collect a tax of six-tenths of one per centum upon the par value of all the shares of said banks, and paying the same into the state treasury before March 1st of each year, were exempt from further taxation upon their shares and so much of their capital and profits as was not invested in real estate.

When said banks did not elect to pay said six-mill tax, it was then made the duty of the president or cashier of every bank (state or national) to make a report in writing to the auditor general, on or before June 20th, stating the amount of capital stock, amount paid in, a list of the shareholders, with their residences, and the number and par value of the shares held by each, and the value of said stock in the market where such bank was located, during the year ending June 20th; and a duplicate of such report should be sent to the commissioners of the city or county in which said bank was located. The auditor general might inquire into the value of the stock, and abate or increase the assessment, as might be just. He then settled an account in the usual manner against the individual shareholders for the state tax, and transmitted the lists and assessments made by him to the commissioners of the proper cities and counties, to be used by them in assessing taxes against the said shareholders.

The Act of 1881 was substantially re-enacted by the Act of June 30, 1885, P. L. 193, save that trust, safe deposit, guarantee, surety, and real estate insurance or trust companies were included with banks, in the option given to elect to pay the six-mill tax on the par value of their shares, in lieu of other taxation upon their stock. This option was taken away from such companies by the Act of June 1, 1889, P. L. 420.

The Act of June 1, 1889, §§ 24 and 25, P. L. 420, was substantially re-enacted by §§ 6 and 7, of the Act of June 8, 1891, P. L. 239. These sections of the latter act provided that state banks, national banks, and savings institutions might elect to

pay, and pay, at any time before the first day of March in each year, a tax of eight mills on the dollar of the par value of their capital stock, and such payment relieved their shares and so much of the capital and profits of said banks as was not invested in real estate from "local" taxation. If they did not elect to pay said eight-mill tax, they were then subject to a tax of four mills on the dollar of the actual value of their capital stock for the year ending with the twentieth of June, and the shares of stock of state and savings banks were subject to a further tax of four mills on the dollar of the actual value thereof, in the hands of the holders. National banks were taxable only on their shares, either at the rate of four mills on their actual value, or, at the option of such banks, at the rate of eight mills on the par value of such shares.

Bank stock is now taxable under the provisions of the Act of July 15, 1897, P. L. 292, which is given in the following section.

§ 868. Banks to make reports—Auditor general to settle tax—Basis of settlement. From and after the passage of this act every bank or savings institution having capital stock, incorporated by or under any law of this Commonwealth, or under any law of the United States, and located within this Commonwealth, shall, on or before the twentieth day of June in each and every year, make to the auditor general a report in writing, verified by the oath or affirmation of the president, cashier, or treasurer, setting forth the full number of shares of the capital stock subscribed for or issued by such bank or savings institution, and the actual value thereof, which shall be ascertained as hereinafter provided; whereupon it shall be the duty of the auditor general to assess such shares for taxation at the same rate as that imposed upon other moneyed capital in the hands of individual citizens of the state; that is to say, at the rate of four mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus and undivided profits, and dividing this amount by the number of shares. The auditor general shall have the power, and it shall be his duty, in case he shall not be satisfied with the correctness of the report as made by the officers of any bank or savings institution, to summon the officers of said

bank or savings institution to appear before him, upon notice to do so, on a day to be fixed by him, and to bring with them the books of said bank or savings institution for his examination; and he shall have the right to have further evidence to satisfy himself as to the correctness of the report made to him on the question of the value of the shares of stock of such bank or savings institution, according to the rule hereinbefore stated. After the auditor general shall have fixed the value of the shares of stock in any bank or savings institution by the method hereinbefore provided, and settled an account according to law, he shall thereupon transmit to the president, cashier, or treasurer of such bank or savings institution, a copy of such settlement, showing the valuation and assessment so made by him, and the amount of tax due the Commonwealth on all such shares. . . .³

Banks are expressly exempted from the payment of the tax on capital stock by the 20th section of the Act of June 1, 1889, and the 4th section of the Act of June 8, 1901, P. L. 229.⁴

§ 869. Settlement to be posted in banks—Tax payable forty days after date of settlement. And it shall be the duty of the president, cashier, or treasurer of any such bank or savings institution, immediately upon the receipt of said settlement, to post the same in a conspicuous place in such bank or savings institution, so as to give notice to the shareholders of such valuation; and it shall be the duty of the auditor general to hear any shareholder upon the subject of the valuation of such shares of stock at the auditor general's office within a period of thirty days from the date of said settlement. It shall be the duty of every bank or savings institution, within a period of forty days after the date of such settlement by the auditor general, at its option to pay the amount of said tax to the state treasurer from its general fund or collect the same from its shareholders and pay over to the state treasurer:⁵

§ 870. Penalty for failure to report and to post settlements in banks. Provided, that if such bank or savings institution shall fail or refuse to make such report, or to pay such tax at the time herein specified, or shall make any false statement in such report, or shall fail or refuse by its offi-

*Sec. 1, Act of June 15, 1897, P. L. 292.

*See § 780.

*Sec. 1, Act of June 15, 1897, P. L. 292.

cers to appear before the auditor general upon notice as aforesaid, or shall fail or refuse to produce its books for examination when required to do so by the auditor general, he shall, after having ascertained the actual value of each share of the capital stock of such bank or savings institution from the best information he can obtain, add thereto fifty per centum as a penalty, assess the tax as aforesaid, and proceed according to law to collect the same from such bank or savings institution: Provided further, that if the president, cashier, or treasurer of any such bank or savings institution shall neglect or refuse to post the copy of the settlement in a conspicuous place in such bank or savings institution immediately upon the receipt of the same, so as to give notice to the shareholders, such president, cashier, or treasurer shall be adjudged to be in default, and as a penalty for such default such bank or savings institution shall be responsible to the Commonwealth for the amount of the tax assessed against the shareholders of such bank or savings institution; . . .⁶

§ 871. Exemptions gained by paying four-mill tax on or before March first. . . . And provided further, that in case any bank or savings institution having capital stock, incorporated under the law of this state or of the United States, shall collect annually from the shareholders thereof said tax of four mills on the dollar upon the actual value of all the shares of stock of said bank or savings institution, according to the rule hereinbefore stated, that have been subscribed for or issued, and pay the same into the state treasury on or before the first day of March in each year, the shares and so much of the capital and profits of such bank or savings institution as shall not be invested in real estate shall be exempted from local taxation under the laws of this Commonwealth; and such bank or savings institution shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation, and shall not be required to pay any tax thereon. . . .⁷

Banks and savings institutions paying the four-mills tax on or before the first day of March in each year under the terms of the foregoing provision are expressly exempted from local tax-

⁶Sec. 1, Act of July 15, 1897, P. L. 292.

⁷Sec. 1, Act of June 15, 1897, P. L. 292.

ation on the bonds, mortgages and other obligations held by them, and "such bank or savings institution shall not be required to make any report to the local assessor or to the county commissioners of its personal property owned by it in its own right for purposes of taxation, and shall not be required to pay any tax thereon."

But for the clause quoted, this provision would not have exempted banks paying the four-mill tax as aforesaid, from the payment of the state tax on personal property on the bonds, mortgages, etc., held by them, it having been held⁸ that the state tax on personal property is not local taxation. The clause quoted, however, expressly relieves banks paying the four-mill tax as aforesaid from the payment of the said tax on personal property.

Banks electing to pay and paying the ten-mill tax, however, are not relieved from the payment of the state tax on their bonds, mortgages, etc., as will appear in the next section.

Banks paying the four-mill tax as aforesaid are not only relieved from the payment of the state tax on personal property on the bonds, mortgages, etc., given by individuals owned by them, but also from the payment of the said tax on the obligations given by corporations held by them, and the treasurers of the corporations issuing the said obligations do not deduct the four-mill tax on corporate loans from the interest paid to said banks on such obligations.⁹

§ 872. Optional ten-mill tax on par value of stock—Exemptions. . . . Except, however, that any bank or savings institution incorporated as aforesaid, in lieu of the method hereinbefore set out for ascertaining the actual value of the shares of capital stock thereof, may elect to collect annually from the stockholders thereof a tax of ten mills on the dollar upon the par value of all shares of said bank that have been subscribed for or issued, and pay the same into the state treasury on or before the first day of March in each year; and the shares of such bank or savings institution, and so much of the capital and profits of

⁸*Wilkes-Barre Deposit & Savings Bank v. Wilkes-Barre*, 148 Pa. 601 (1892); but the exemption in question relieves from the payment of municipal taxes or license fees imposed for general revenue purposes, though not, apparently, when imposed under

the police power. *Oil City v. Oil City Trust Co.*, 151 Pa. 454 (1892).

⁹*Com. v. Clairton Steel Co.*, 222 Pa. 293 (1908); *People's Savings Bank v. Monongahela Consolidated C. & C. Co.*, 29 Pa. Super. Ct. 153 (1908).

such bank or savings institution as shall not be invested in real estate, shall be exempted from local taxation under the laws of this Commonwealth.¹⁰

The provision for the payment of an optional ten-mill tax superseded the provisions of prior acts permitting the payment of an optional tax of first six and subsequently eight mills. The Act of July 15, 1897, was intended to abolish the system of permitting the payment of an optional tax, but was amended so as to provide for the same.

The Act of June 8, 1891, P. L. 240, providing for the payment of an optional eight-mill tax was held not to be unconstitutional on account of lack of uniformity, nor in conflict with the provisions of the national bank act, nor with the fourteenth amendment of the Constitution of the United States,¹¹ and a similar decision was rendered relative to the 17th section of the Act of June 7, 1879, P. L. 112, providing for the payment of an optional six-mill tax.¹²

Banks electing to pay the optional ten-mill tax under the provisions of the foregoing section are exempt from "local taxation" on so much of their capital and profits as is not invested in real estate, but, as before stated, the state tax on personal property is not "local taxation,"¹³ and consequently such banks are subject to the payment of the state tax on personal property on the bonds, mortgages, etc., held by them, whether such obligations be those of individuals or of corporations.¹⁴

§ 873. Liability of bank shares to further taxation in the hands of the holders. The Act of June 15, 1897, *supra*, provides that where banks or savings institutions pay the four-mill tax on or before the first day of March in each year, the shares shall be exempt from local taxation under the laws of this Commonwealth, but the state tax on personal property is not "local taxation."¹⁵ The shares of stock of banks are specifically

¹⁰Sec. 1, Act of July 15, 1897, P. L. 292.

¹¹*Com. v. Merchants & Manufacturer's National Bank of Pittsburgh*, 168 Pa. 309 (1895). See *Com. v. Mortgage Trust Co.*, 224 Pa. — (1909).

¹²*Truby's appeal*, 9 W. N. C. 550 (1880).

¹³*Wilkes-Barre Deposit & Sav-*

ings Bank v. Wilkes-Barre, 148 Pa. 601 (1892).

¹⁴*Com. v. Clairton Steel Co.*, 222 Pa. 293 (1908); *Wilkes-Barre Deposit & Savings Bank v. Wilkes-Barre*, 148 Pa. 601 (1892).

¹⁵*Wilkes-Barre Deposit & Savings Bank v. Wilkes-Barre*, 148 Pa. 601 (1892).

made subject to payment of the tax on personal property in the hands of the holders thereof by § 1 of the Act of June 8, 1891, P. L. 230,¹⁶ and as just stated, the Act of 1897 does not exempt them from state taxation.

The question then arises whether, if a bank does not collect from the shareholders and pay, or pay itself out of its general fund, the state tax of four mills on or before the first day of March in each year, the shares of such banks become liable to an additional tax in the hands of the holders thereof; and the same question arises as to banks electing to pay the ten-mill tax.

It was held in one case that under §§ 3 and 5 of the Act of June 30, 1885, the shares of stock of banks failing to pay the optional six-mill tax on or before the 20th day of June in each year, were taxable to the bank and the shares thereof taxable in the hands of the holders.¹⁷

In another case, however, involving the construction of the same act, the court said:

"The fact remains, however, that no intent is apparent in our legislation upon this subject treating the different statutes as a scheme of taxation, to tax both the capital stock and the shares of stock in the hands of the shareholders. Such taxation, notwithstanding the subtle distinction of the court below, would be substantially double taxation. Conceding the power of the Legislature to tax in this manner, its exercise is never to be presumed. The intent to impose double taxation must be clearly expressed."¹⁸

It will be noted, however, that the tax imposed by the Act of 1897 is a tax on shares, and that said act may be considered rather as providing a method of imposing the tax provided for in the first section of the Act of June 8, 1891, than as imposing a separate tax.

It is safe to say, therefore, that while banks which do not pay the four-mill tax on or before the first day of March in each year thus become liable to the payment of the state tax on personal property on the bonds, mortgages, etc., held by them, the shares thereof do not become liable to further taxation in the hands of the holders thereof; nor do the shares of banks electing to pay the ten-mill tax.

¹⁶See § 911.

¹⁷*Gorley v. Bowlby*, 8 Pa. C. C. 17 (1890).

¹⁸*Penna. Co. for Ins. on Lives, etc. v. Com.*, 22 W. N. C. 340 (1888).

Under the 26th section of the Act of June 1, 1889, as amended by the Act of June 8, 1891, P. L. 242, the value of bank stock for taxation was a question of fact, and in arriving at the same all questions affecting the value of the stock were to be taken into consideration,¹⁹ but the Act of 1897 provides an inflexible rule for the ascertainment of the taxable value of the stock, viz: by adding together the amount of capital stock paid in, the surplus and undivided profits and dividing this amount by the number of shares. The auditor general must settle tax upon this basis, although he is not concluded by the reports of banks, and may otherwise satisfy himself of the actual amounts, respectively, of the capital stock, surplus and undivided profits.

§ 874. **Taxation of national banks.** Under the provisions of former acts, separate provisions were made for the taxation of national banks from those providing for the taxation of state banks and savings institutions, but the Act of July 15, 1897, makes but one provision for the taxation of national and state banks. The only difference between the taxation of national banks and that of state banks and savings institutions is that the bonds, mortgages and other personal property owned by national banks may not be subjected to the payment of the state tax on personal property, whether such national banks fail to pay the four-mill tax on or before March first of each year or whether they elect to pay and pay the ten-mill tax, for the reason that under the provisions of the National Bank Act of Feb. 10, 1868, U. S. Statutes at Large, 34, only the shares of national banks may be taxed by the state,²⁰ and at a rate not to exceed that imposed on other moneyed capital in the hands of citizens of the state.

The fact that certain property is exempt from all taxation does not, under said Act of Congress of 1868, forbid the taxation of shares of national banks.²¹

"The term 'moneyed capital' in the Act of Congress, . . .

¹⁹Com. v. Merchants' National Bank of Phila., 19 Pa. C. C. 274 (1897); Com. v. First National Bank of Darby, 2 Dauph. Co. Rep. 88 (1897).

²⁰Pittsburgh v. First National Bank of Pittsburgh, 55 Pa. 45

(1867); Markhue v. Hartranft, 24 Leg. Int. 148 (1867).

²¹Everitt's Appeal, 71 Pa. 216 (1872); Gorgas's Appeal, 79 Pa. 149 (1875); Hepburn v. Carlisle School Directors, 23 Wall. 480 (1874); Boyer's Appeal, 103 Pa. 387 (1883).

does not include capital which does not come into competition with the business of national banks, and exemptions from taxation made for the purposes of public policy and not as an unfriendly discrimination against investments in national bank shares,"²² but shares of national banks may not be taxed locally by a state when a relatively large part of other moneyed capital in the hands of individual citizens of the state is exempt from local taxation, whether invested in bank shares or otherwise.²³

The language of the National Bank Act of 1864 that national banks shall be taxed only "where the bank is located and not elsewhere" was declared by the Act of Congress of February 10, 1868, to mean "the state within which the bank is located." Said Act of 1868 further provides that the shares "owned by non-residents of any state shall be taxed in the city or town where the bank is located and not elsewhere."²⁴ The state may direct the manner and place of taxing the shares of resident shareholders. The shares of national banks located in other states, owned by residents of Pennsylvania, are not taxable to the holders thereof in Pennsylvania.²⁵

A national bank does not become subject to taxation in a state other than that in which it is established, by having an office in another state where it does no other business than to receive deposits.²⁶

§ 875. Real estate of banks taxable locally. Prior to the passage of the Act of June 10, 1881, which provided that banks paying the six-mill tax should not be exempt on so much of their capital as was invested in real estate, it was held that, under the Acts of March 31, 1870, P. L. 42, and June 7, 1879, the real estate of banks paying the six-mill tax was exempt from local taxation.²⁷

²²Wellington v. Chapman, 173 U. S. 205.

²³Boyer v. Boyer, 113 U. S. 689 (1884).

²⁴Strong v. O'Donnell, 10 Phila. 575 (1873).

²⁵Tappan v. Merchants National Bank, 22 Wall. 490; Bucks County v. Ely, 6 Phila. 414 (1867).

²⁶National State Bank of Camden v. Pierce et al., 5 W. N. C. 344 (1878); U. S. Circ. Court.

²⁷Lackawanna County v. First National Bank of Scranton, 94 Pa. 221 (1880); Lancaster County v. Lancaster National Bank, 7 W. N. C. 29 (1879); Cumberland Co. v. First National Bank of Mechanicsburg, 12 W. N. C. 187 (1882).

But it was held that the real estate of said banks was not exempt from local taxation where it was purchased from the profits and earnings of the bank.²⁸

Under the provisions of the Act of July 30, 1897, *supra*, the real estate of national and state banks and savings institutions is taxable for local purposes under all circumstances.

§ 876. Capital stock of banks invested in United States bonds. The shareholders of a bank may be taxed by the state on shares so held by them although all the capital of the bank be invested in federal securities,²⁹ but the capital stock itself, when so invested may not be taxed.³⁰

§ 877. Reports. Banks electing to collect and pay the tax provided for by the Act of 1897, on or before the first day of March, are required, at the time of making such payment, to file a report, setting forth the full number of shares of capital stock subscribed for or issued by each, the amount of surplus and undivided profits, and the amount of capital stock paid in, and an election to collect and pay the tax on or before said first day of March. Banks so reporting and paying tax are not required to make the report required by the act to be made on or before the twentieth day of June in each year. Said banks are exempt from the state tax on their bonds, mortgages, etc., held and owned by them in their own right, and will not return the same to the local assessors.

Banks *not* electing to collect and pay the tax on or before March 1st in each year, nor electing to pay the ten-mill tax referred to below, make the report prescribed by the act, on or before June 20; and such banks, except National banks, are subject, not only to the tax provided by the act on their stock, but the bonds, mortgages, etc., held by them will be subject to the state tax on personal property, and to the tax on corporate loans.

Banks electing to collect and pay the ten-mill tax on the par value of their shares make a report, on or before March 1st in each year, electing to make such payment, and giving the author-

²⁸Chester County v. National Bank of Chester Co., 1 Chest. 130 (1881); 12 Lanc. Co., 163; Farmers & Druggers National Bank v. Greene County, 1 Chest. Co. 129 (1874).

²⁹Louisville v. Kentucky, 9 Wall. 353.

³⁰Van Allen v. Assessor, 3 Wall. 573.

ized amount of their capital stock, number of shares, par value of each share, and aggregate par value of all shares. Except in the case of National banks, the payment of the ten-mill tax will not relieve the said banks from the state tax on personal property on the bonds, mortgages, etc., held by them, as we have already seen that such tax is not "local taxation." Their said obligations will also be subject to the tax on corporate loans.

The amount of the paid-in capital stock, surplus and undivided profits should be returned as of the date when the report is made, in the case of banks electing to pay the four-mill tax on or before the first day of March. When banks do not so elect, then the value of the stock, surplus and undivided profits should be given as the same exists on June 20, or if that day fall on Sunday or a holiday, then on the last business day preceding that date.

Banks incorporated during the course of a tax year, that is, at any time after the 20th day of June, should, in reporting, give the number of payments made by stockholders on account of capital stock, the date of each payment and the amount of the same, in order that the accounting officers may settle tax only on the average amount of stock which has been outstanding during the portion of the year which the bank has been in existence.

Banks are not permitted to deduct their bad accounts from the value reported by them unless such accounts have been actually and finally stricken from their books, in which case they may deduct the amount of the same from their undivided profits; that is, if their undivided profits would otherwise be \$20,000, but they have during the tax year actually and finally stricken from their books \$10,000 of bad accounts, they may then report their undivided profits as but \$10,000.

Banks are not entitled to make any deductions from the value returned by them on account of real estate held by them on the ground that they are already taxed on such real estate. The tax paid on real property is for local purposes only, while the tax on bank stock is solely for state purposes, hence it is not double taxation to tax banks on their capital stock, surplus and undivided profits, although a portion thereof is invested in land subject to local taxation.

§ 878. Banks subject to municipal licenses. The pay-

ment of bank tax, under the Act of 1897, either on or before the first day of March or afterwards, will not relieve banks paying the same from the payment of any municipal license fee to which they would otherwise be subject.⁸¹

⁸¹Oil City v. Oil City Trust Co., 151 Pa. 458 (1892). See § 381.

CHAPTER XL.

TAX ON PREMIUMS OF INSURANCE COMPANIES.

- § 879. Tax on premiums of foreign insurance companies.
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§ 879. Tax on premiums of foreign insurance companies. In lieu of any license fees or other charges for state purposes, either on foreign insurance companies or their agents within the state, a tax is imposed upon the gross premiums of such companies, as provided in the following section.

Foreign insurance companies are expressly exempted from the payment of the tax on capital stock.¹

§ 880. Imposition of tax on premiums of foreign insurance companies. No person shall act as agent or solicitor in this state of any insurance company of another state, or foreign government, in any manner whatever relating to risks, until the provisions of this act have been complied with on the part of the company or association, and there has been granted to said company or association, by the commissioner [of insurance], a certificate of authority showing that the company or association is authorized to transact business in the state; and it shall be the duty of every such company or association, authorized to transact business in this state, to make report to the commissioner in the month of January of each year, under oath of the president or secretary thereof, showing the entire amount

¹See § 780.

of premiums of every character and description received by said company or association in this state, during the year or fraction of a year ending with the thirty-first day of December preceding, whether said premiums were received in money, or in the form of notes, credits, or any other substitute for money, and pay into the state treasury a tax of three per centum upon said premiums; and the commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the state treasury.²

. . . Hereafter the annual tax upon premiums of insurance companies of other states or foreign governments shall be at the rate of two per centum upon the gross premiums of every character and description received from business done within this Commonwealth within the entire calendar year preceding.³

§ 881. The tax is constitutional. The tax on the premiums of foreign insurance companies is constitutional.⁴

§ 882. Payment of tax. The tax on the premiums of foreign insurance companies is paid directly to the commissioner of insurance. No settlement therefor is made by the accounting officers. The insurance commissioner ascertains whether the amount paid corresponds with the premiums reported, and, if so, pays the money into the state treasury. There is no other manner of settling or adjusting the tax.

§ 883. Payment of part of tax to cities, boroughs and townships of the first class. On and after the first day of January, one thousand nine hundred and six, and annually thereafter, there shall be paid by the state treasurer to the treasurers of the several cities, boroughs and townships of the first class within this Commonwealth, one-half of the net amount received from the two per centum tax paid upon premiums by foreign fire insurance companies. The amount to be paid to each of the treasurers of the several cities, boroughs and townships of the first class, shall be based upon the return of the said two per centum tax upon premiums, received from foreign fire insurance companies doing business within the said cities, boroughs and

²Sec. 10, Act of April 4, 1873, P. L. 26.

³Sec. 1, Act of June 28, 1895, P. L. 408, amending § 24, Act June 1, 1889, P. L. 420.

⁴Germania Life Ins. Co. v. Com., 85 Pa. 513 (1877); Ins. Co. of North America v. Com., 87 Pa. 173 (1878).

townships of the first class, as is shown by the insurance commissioner's report. Warrants for the above purpose shall be drawn by the auditor general, payable to the treasurers of the several cities, boroughs and townships of the first class, in accordance with this act, whenever there are sufficient funds in the state treasury to pay the same.⁵

The commissioner of insurance makes a report to the auditor general of the amount received in premiums by each foreign fire insurance company doing business within the state, from insurance effected in each city, borough and township of the first class, respectively. From these reports the auditor general opens accounts with municipalities and townships, crediting them with the premiums reported as paid by the inhabitants thereof, respectively, by each foreign fire insurance company doing business therein. The tax is then computed and warrants for one-half the amount thereof are mailed to the treasurers of said municipalities and townships.

§ 884. Deductions from gross premiums in arriving at amount taxable. In collecting the tax on the premiums of foreign insurance companies, an allowance should be made for returned premiums, but no deduction for the cost of reinsurance⁶ nor on account of dividends paid to policy holders.⁷

§ 885. History of tax on premiums of domestic insurance companies. The tax on the gross premiums of domestic insurance companies was first imposed by the sixth section of the Act of March 20, 1877, P. L. 6. This section required the payment of the tax on the "entire amount of premiums received by such company," as did also the eighth section of the Act of June 7, 1879, P. L. 112. It was provided, however, by § 7 of the Act of June 10, 1881, P. L. 101, that:

All insurance companies, which shall, within thirty days after the approval of this act, pay into the treasury of this Commonwealth the amount of money claimed by the Commonwealth for taxes upon gross premiums for the period of time between March 20, 1877, and the first day of January, 1881, together with inter-

⁵Act of April 20, 1905, P. L. 229, amending § 2, Act of June 28, 1895, P. L. 410, so as to extend its provisions to payments to townships of the first class.

⁶Insurance Companies Tax, 3 D. R. 350 (1894); 14 Pa. C. C. 605.

⁷In re Northwestern Mut. Life Ins. Co., 18 D. R. 490 (1909).

est upon the same, shall be liable, from and after the first day of January, 1881, during the continuance of this act, to no taxes upon their premiums, except upon such as were or shall be received from business transacted within this Commonwealth.

The Supreme Court had previously held that domestic corporations could be taxed, under the Act of 1877, on premiums received from business transacted without the state.⁸

The twenty-fourth section of the Act of June 1, 1889, P. L. 420, following the Act of 1881, limited the premiums taxable to those "received from business transacted in this Commonwealth." The tax is now imposed by the Act of June 28, 1895, P. L. 408, which purports to amend the said 24th section of the Act of June 1, 1889, but merely re-enacts it.

§ 886. Imposition of the tax on premiums of domestic insurance companies—Reports—Penalty. Hereafter it shall be the duty of the president, secretary or other proper officer of each and every insurance company or association, incorporated by or under any law of this Commonwealth, except companies doing business upon the purely mutual plan without any capital stock or accumulated reserve, and purely mutual beneficial associations whose funds for the benefit of members, their families or heirs are made up entirely of the weekly or monthly contributions of their members, and the accumulated interest thereon, to make report in writing to the auditor general, semi-annually, upon the first days of July and January in each year, setting forth the entire amount of premiums and assessments received by such company or association during the preceding six months, whether said premiums and assessments were received in money or in the form of notes, credits or other substitutes for money; and every such company or association shall pay into the state treasury, semi-annually, on the last days of January and July, in addition to any other taxes to which it may be liable under the first and twenty-first sections of this act, a tax of eight mills on the dollar upon the gross amount of said premiums and assessments received from business transacted within this Commonwealth: Provided, that said reports shall be made under oath or affirmation, and it shall be the duty of the accounting officers of the Commonwealth to add ten per centum to the account of any company or association whose officers shall neglect or refuse for

⁸Insurance Co. of N. A. v. Com., 87 Pa. 173 (1878); 6 W. N. C. 177.

a period of thirty days to make said report, or to pay into the state treasury the tax imposed by this section. . . .⁹

• § 887. **Decisions.** When a mutual insurance company is authorized by a supplement to its charter to make insurance for cash premiums to non-members, it ceases to be "purely mutual," and becomes subject to the tax on its premiums.¹⁰

Insurance companies without capital stock, but yet receiving premiums upon which they were taxable, were subject to the payment, in addition, to the tax on net earnings, until the passage of § 10, of the Act of June 7, 1879.¹¹

When a corporation at the time of its dissolution is a debtor to the state for tax on premiums, the debt continues to exist, and is a charge upon the assets of the company in the hands of its receiver.¹²

§ 888. **Reports.** Blanks upon which to make semi-annual reports for the periods ending June 30th and December 31st in each year, respectively, are sent by the auditor general to the companies liable to the tax, about the dates named. The act requires that the tax shall be paid on the last days of July and January in each year. The provisions as to the time within which reports for the above-named periods must be made is not definitely stated in the act, which provides that a penalty of ten per centum shall be added to the account of any company whose "officers shall neglect or refuse for a period of thirty days to make said report." Whether the said thirty days are to be reckoned from June 30th and December 31st, on which end, respectively, the periods for which the reports are to be made, or whether they are to be calculated from the last days of January and July, respectively, when the tax becomes due, is not clear. The practice is, however, to require the reports to be made on or before July 31st and January 31st, respectively, and not to require the payment of the tax until settlements have been made therefor, and copies have been served upon the companies against which the settlements are made, and the usual time for taking appeals has expired.

⁹Sec. 1, Act of June 28, 1895, P. L. 408, which purports to amend the 24th section of the Act of June 1, 1889, P. L. 420, but which really re-enacts the same in precisely the same language.

¹⁰*Lycoming Fire Ins. Co. v. Com.*, 10 W. N. C. 228 (1881).

¹¹*Com. v. Penn. Mutual Life Ins. Co.*, 1 Dau. Co. Rep. 233 (1889).

¹²*Com. v. American Life Ins. Co.*, 14 Pa. C. C. 216 (1893).

CHAPTER XLI.

TAX ON NET EARNINGS OR INCOME.

§ 889. History.

890. Imposition of the tax.

891. Nature of the tax.

892. Decisions.

§ 889. **History.** This tax was originated by § 2 of the Act of April 30, 1864, P. L. 218, which provided:

Every incorporated or unincorporated banking and savings institution and deposit and trust company, every gas company, every express company, bridge company, insurance company, foreign insurance company, building and loan association, and manufacturing, mechanical, and mining and quarrying company, and all other companies and corporations doing business in Pennsylvania, except those specified in the first section of this act, not paying a tax to the state on dividends [exceptions: all transportation companies] shall annually, on the first day of November of each year, make report to the auditor general . . . setting forth the amount of net earnings or income, received . . . during the preceding year, and upon such net earnings or income . . . shall pay . . . three per centum.

Section 6 of the Act of May 1, 1868, P. L. 108, imposed the tax upon "every unincorporated bank and savings institution and express company, and all corporations except those liable to the tax on tonnage, and foreign insurance companies."

Section 2 of the Act of March 21, 1875, P. L. 46, relieved from the payment of the tax all corporations subject to the payment of a tax upon their capital stock, and § 10 of the Act of June 7, 1879, P. L. 112, exempted from the payment thereof all corporations "liable to a tax on capital stock or gross receipts . . . and the banks, trust companies and savings institutions having capital stock and foreign insurance companies." The existing act, § 27 of the Act of June 1, 1889, P. L. 420, was intended to be a drag-net to cover such corporations as, owing to their peculiar nature, might not be comprehended among the

classes of corporations subjected to taxation by the other sections of said act. This section is as follows:

§ 890. Imposition of the tax. From and after the passage of this act every incorporated company or limited partnership whatever, whether the same be incorporated, formed or organized under the laws of this or any other state or territory, and doing business within this Commonwealth, and liable to taxation therein, which is not subject to the taxes imposed by the twenty-first or twenty-fourth sections of this act, except incorporated banks and savings institutions having capital stock, and foreign insurance companies, shall annually, upon the first Monday of November of each year, make report to the auditor general under oath of some officer of such company, association, or limited partnership, setting forth the entire amount of net earnings or income received by said company or limited partnership from all sources during the preceding year; and upon such net earnings or income, the said company, association, or limited partnership, as the case may be, shall pay into the state treasury for the use of the Commonwealth, within sixty days thereafter, three per centum upon such annual net earnings or income, in addition to any taxes on personal property to which it may be subject under the first section of this act; and in case any company or limited partnership, as aforesaid, shall neglect or refuse to make the report required by this section to the auditor general, on or before the thirty-first day of December following, such company, association, or limited partnership shall be liable to a penalty of ten per centum for such neglect, which shall be added to the amount of tax found due on the settlement of their account: Provided, that this section shall not apply to corporations and limited partnerships chartered or organized for manufacturing purposes.¹

The foregoing provision exempts from its operations (a) corporations paying a capital stock tax, and (b) incorporated banks and savings institutions, and (c) foreign insurance companies, thus leaving subject to the tax practically only corporations without capital stock, such as savings funds, etc.

§ 891. Nature of the tax. A tax on net earnings or income is a franchise tax and corporations subject to the tax are not subject to double taxation although the net income or earnings were

¹Sec. 27, Act of June 1, 1889, P. L. 420.

derived from the interest on bonds taxable under the fourth section of the Act of June 30, 1885, P. L. 193.²

Corporations liable to the tax on net earnings or income are not entitled to deduct from the amount of their gross income the difference between the amount expended several years before for the purchase of certain securities and the par value at which the said securities were redeemed within the current year.³

§ 892. Decisions. The net income of a corporation is liable to taxation, whether declared in dividends or not.⁴

A company claimed that it could have no net income until the capital stock invested in its business had been repaid. Held, that the income of the works, after deducting the expenses, was the net income to be taxed.⁵

²Com. v. N. Y., L. E. & W. R. Insurance, etc. v. Com., 98 Pa. 48 R. Co., 150 Pa. 234 (1892); Phila. (1881).

Contributionship for Insurance, etc. v. Com., 98 Pa. 48 (1881). ⁴Com. v. Ocean Oil Co., 59 Pa. 61 (1868).

⁵Phila. Contributionship for In- ⁵Com. v. Ocean Oil Co., 59 Pa. 61 (1868).

CHAPTER XLII.

TAX ON STOCK OF TRUST COMPANIES.

§ 893. History.

894. Trust companies to make reports—What companies taxable—Basis of settlement.

895. Auditor general to satisfy himself of correctness of reports—Settlements to be posted and tax paid within forty days.

896. Penalty for failure to make reports and post settlements.

897. Exemptions gained by payment of tax on or before March first.

898. The tax is constitutional.

§ 893. **History.** Prior to the passage of the Act of June 30, 1885, P. L. 194, trust companies were subject to the tax on capital stock. By the 3rd section of the said Act of 1885, however, they, in common with banks and savings institutions, were permitted, in lieu of the payment of the tax on capital stock, to elect to pay and pay a tax of six-tenths of one per centum upon the par value of all their shares of stock. It was, therefore, optional with them whether they paid the capital stock tax or the above mentioned tax. When they paid the capital stock tax, they were not further taxable upon their shares.¹

The privilege of paying the said optional tax of six-tenths of one per centum was taken away from trust companies by the Act of June 1, 1889, P. L. 420, which omitted trust companies from those corporations entitled to pay the eight-mill tax provided for by the act, which tax superseded the six-mill tax provided for by the Act of 1885.

Trust companies, therefore, remained subject to the payment of the tax on capital stock until the passage of the Act of June 13, 1907, P. L. 640, *infra*, §§ 894-897, which is now in force.

894. Trust companies to make reports—What companies taxable—Basis of settlement. From and after the passage of this act, every company incorporated under the provisions of section twenty-nine of an act, entitled "An Act to provide for the incorporation and regulation of certain corporations,"

¹Penna. Co. for Ins. on Lives, etc. v. Com., 2 Mona. 694 (1889).

approved April twenty-ninth, one thousand eight hundred and seventy-four, and its supplements; for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens, and incumbrances; and every company entitled to benefits of, and every company having any of the powers of, companies entitled to the benefits of an act, entitled "An Act conferring upon certain fidelity, insurance, safety deposit, trust, and savings companies the powers and privileges of companies incorporated under the provisions of section twenty-nine of an act, entitled 'An Act to provide for the incorporation and regulation of certain corporations,' approved April twenty-ninth, Anno Domini, one thousand eight hundred and seventy-four, and of the supplements thereto," approved June twenty-seventh, one thousand eight hundred and ninety-five, commonly known as title insurance, or trust, companies, shall on or before the twentieth day of June in each and every year, make to the auditor general a report in writing, verified by the oath or affirmation of the president, secretary, or treasurer, setting forth the full number of shares of the capital stock subscribed for or issued by such company, and the actual value thereof, which shall be ascertained as hereinafter provided; and thereupon it shall be the duty of the auditor general to assess such shares for taxation at the rate of five mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus and undivided profits, and dividing this amount by the number of shares. . . .²

§ 895. Auditor general to satisfy himself of correctness of reports—Settlements to be posted and tax paid within forty days. . . . The auditor general shall have the power, and it shall be his duty, in case he shall not be satisfied with the correctness of the report as made by the officers of any such company, to summon the officers of said company to appear before him, upon notice to do so, on a day to be fixed by him, and to bring with them the books of said company for his examination; and he shall have the right to have further evidence to satisfy himself of the correctness of the report made to him on the question of the value of the shares of stock of such company, according to the rule hereinbefore stated. After the auditor gen-

²Act of June 13, 1907, P. L. 640.

eral shall have fixed the value of the shares of stock in any such company by the method hereinbefore provided, and settled an account according to law, he shall thereupon transmit to the president, cashier, or treasurer of such company a copy of such settlement, showing the valuation and assessment so made by him and the amount of tax due the Commonwealth on all such shares. And it shall be the duty of the president, secretary, or treasurer of any such company, immediately upon the receipt of said settlement, to post the same in a conspicuous place in such company's place of business, so as to give notice to the shareholders of such valuation; and it shall be the duty of the auditor general to hear any shareholder upon the subject of the valuation of such shares of stock, at the auditor general's office, within a period of thirty days from the date of said settlement. It shall be the duty of every such company, within a period of forty days after the date of such settlement by the auditor general, at its option to pay the amount of said tax to the state treasurer from its general fund, or collect the same from its shareholders and pay over to the state treasurer. . . .³

§ 896. Penalty for failure to make reports and post settlements. . . . Provided, that if any such company shall fail or refuse to make such report, or to pay such tax, at the time hereinbefore specified, or shall make any false statement in such report, or shall fail or refuse by its officers to appear before the auditor general upon notice as aforesaid, or shall fail or refuse to produce its books for examination when required to do so by the auditor general, he shall, after having ascertained the actual value of each share of the capital stock of such company from the best information he can obtain, add thereto fifty per centum as a penalty, assess the tax as aforesaid, and proceed according to law to collect the same from such company: Provided further, that if the president, cashier, or treasurer of any such company shall neglect or refuse to post a copy of the settlement, in a conspicuous place in such company's place of business, immediately upon the receipt of the same, so as to give notice to the shareholders, such president, cashier, or treasurer, shall be adjudged to be in default, and, as a penalty for such default, such company shall be responsible to the Commonwealth for the amount of the tax assessed against the shareholders of such company. . . .⁴

³Act of June 13, 1907, P. L. 640.

⁴Act of June 13, 1907, P. L. 640.

§ 897. **Exemptions gained by payment of tax on or before March first.** . . . And provided further, that in case any such company shall collect annually from the shareholders thereof, or from the general fund of said company, said tax of five mills on the dollar upon the value of all the shares of stock of said company, the value of each share of stock to be ascertained and fixed by adding together so much of the capital stock paid in, the surplus, and undivided profits as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or tax on shares, and dividing this amount by the number of shares of such title insurance or trust company, and pay said tax into the state treasury, on or before the first day of March in each year, the shares, and so much of the capital stock, surplus, profits, and deposits of such company as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this Commonwealth.⁵

§ 898. **The tax is constitutional.** The foregoing Act of June 13, 1907, P. L. 640, is not unconstitutional on account of lack of uniformity in the operation of the tax imposed thereby.⁶

It appears that trust companies were subject to the tax on capital stock for the period between the first Monday of November, 1906, and the 13th day of June, 1907, although the act passed on the latter date contains no provision for the collection of capital stock tax of trust companies accrued and unpaid before the passage of the said act.⁷

⁵Act of June 13, 1907. P. L. 640.

⁶Com. v. Mortgage Trust Co.

⁷Com. v. Mortgage Trust Co. of Penna., 224 Pa. — (1909).
of Penna., 224 Pa. — (1909).

CHAPTER XLIII.

TAX ON MATURED STOCK OF BUILDING AND LOAN ASSOCIATIONS.

§ 899. Building and loan associations exempt from certain taxes.

900. Tax on matured stock of building and loan associations.

§ 899. Building and loan associations exempt from certain taxes. Building and loan associations are exempt from the payment of the tax on capital stock,¹ and they are also exempt from the payment of the state tax on personal property:

"And provided that the provisions of this act shall not apply to building and loan associations. . . ."²

§ 900. Tax on matured stock of building and loan associations. Upon all full-paid, prepaid, and fully matured or partly matured stock in any building and loan association incorporated under the laws of this state, or incorporated under the laws of any other state and doing business within this state; and upon which annual, semi-annual, quarterly, or monthly cash dividends or interest shall be paid, there shall be paid a state tax equal to that required to be paid upon money at interest by the general tax laws of this state; and such tax shall be deducted from the cash dividend or interest so provided for by the secretary or treasurer of such corporation, and be paid to the state treasurer. And every such domestic corporation shall annually make return to the auditor general, at the time other returns for taxation are required to be made, of the amount of its stock outstanding entitled to receive cash dividends or interest, and every such foreign corporation shall, in the reports required to be made by them to the banking department, make report of the amount of its stock, held by residents of this state, entitled to receive cash dividends or interest; and said banking department shall, at the time other returns for taxation are required to be made, certify to the auditor general the amount of such stock each of said foreign corporations had outstanding at the time of

¹See § 779.

May 1, 1909, P. L. 298. See §

²Sec. 1, Act of June 8, 1891, P. 911, *infra*.

L. 229, as amended by Act of

its last report to said banking department, and upon said sum such foreign corporation shall pay the tax above required to be paid to the state treasurer, upon demand, and failure to make such payment within thirty days after such demand shall have been made shall subject such corporation to the forfeiture of its right to transact business in this state: Provided, however, that nothing in this act shall be taken to require the payment of any tax upon any unmatured stock of building and loan associations upon which periodical payments are required to be made, or upon any such stock after it has matured and is in process of payment.³

The restrictions imposed upon the operation of foreign building and loan associations in Pennsylvania by the provisions of the Act of May 11, 1901, P. L. 153, are so onerous that it is not thought that any such associations now do business in Pennsylvania.

Reports are to be made under the above provisions "at the time other returns for taxation are required to be made." This is uncertain inasmuch as reports for different kinds of taxes are made at different times, but as the tax imposed is to be equal to that "required to be paid on moneys at interest," the tax year for which is the calendar year, the auditor general's department holds that reports should be made under the act for the calendar year and as soon after the thirty-first day of December as circumstances will permit.

Prior to the passage of this act building and loan associations were not required to register in the auditor general's department, but they are now required to do so under the provisions of the 19th section of the Act of June 1, 1889.⁴

The tax is at the rate of four mills, and may be assessed only on stock outstanding at the time the report is made. When reports are filed by foreign associations, such associations may include such data as the banking department may require, but their report must include the amount of stock held by residents of this state entitled to receive cash dividends or interest.⁵

Building and loan associations are taxable upon monthly payment stock which has matured, but which for some reason has not been paid and upon which the association is paying interest.⁶

³Act of June 22, 1897, P. L. 178.

⁴See § 727.

⁵Construction of the Act of June 22, 1897, 7 D. R. 121 (1898).

⁶Building & Loan Associations, 8 D. R. 266 (1899); 22 Pa. C. C. 303.

CHAPTER XLIV.

TAX ON GROSS RECEIPTS OF PRIVATE BANKERS.

§ 901. History.

902. Imposition of the Tax.

902a. Brokers relieved from payment of tax.

903. Private bankers to register in the auditor general's department.

904. Penalty for not reporting or registering.

905. Payment of tax does not relieve from payment of tax on personal property.

906. Tax in addition to license fees.

§ 901. History. This tax was originally a tax on the net earnings or income of brokers and private bankers and was first imposed by the Act of May 16, 1861, P. L. 708, which provided that:

"Every stock broker, bill broker, exchange broker, real estate broker, and private banker in this Commonwealth shall . . . make a written return to the auditor general, . . . in which he shall . . . set forth the full amount of his receipts from commissions, discounts, abatements, allowances, and all other profits arising from his business, . . . and pay . . . three per cent. upon the aggregate amount contained in such return, for the use of the Commonwealth."

The Act of April 30, 1864, P. L. 218, used the language "every private banker and broker," as did also the Act of May 1, 1868, and the same language is used in § 10 of the Act of June 7, 1879, P. L. 112.

The Act of June 27, 1895, P. L. 396, without recurring to the Acts of 1864, 1868, and 1879, amended the original Act of 1861 only by omitting therefrom the words "real estate broker."

All the foregoing acts provided for the imposition of the tax on the aggregate gross amount of the receipts of brokers and private bankers from their business. The Supreme Court held, however,¹

¹Drexel & Co. v. Com., 46 Pa. 31 (1863); Com. v. Heiser, 2 Pitts. 545 (1865).

that the Act of May 16, 1861, "clearly intended to levy a tax of three per centum on the profits or income of the business and was not meant to tax the capital. . . . It was, in fact, a tax upon the income of the business in which the defendant was engaged." Under the foregoing decisions the practice was, under all of the foregoing acts, to settle tax on the net earnings of private bankers and brokers and not on the gross receipts.

The foregoing Act of June 7, 1895, P. L. 396, was amended by the Act of June 13, 1901, P. L. 359, so as to impose a tax on the gross receipts of brokers and private bankers instead of on the net earnings or income thereof.

§ 902. Imposition of the tax. Every stock broker, bill broker, exchange broker, merchandise broker and private banker in this Commonwealth shall, on or before the first Monday of December next, and on or before the same day in each year thereafter, make a written return, under oath or affirmation, to the auditor general of this Commonwealth, in which return he shall exhibit and set forth the full amount of his gross receipts from commissions, discounts, abatements, allowances and all other receipts arising from his business during the year ending with the thirtieth day of November preceding the date of such annual return, and shall forthwith pay into the state treasury one per centum upon the aggregate amount of such gross receipts contained in such return, for the use of the Commonwealth.²

As above noted, real estate brokers were relieved from the payment of the tax by the Act of June 27, 1895, P. L. 396. The constitutionality of an ordinance taxing merchandise and real estate brokers and not taxing other classes of brokers has been sustained.³

§ 902a. Brokers relieved from payment of tax. Section 11 of the Act of May 7, 1907, P. L. 179, relieves brokers of all kinds from the payment of this tax, leaving only private bankers subject thereto. See § 1167.

§ 903. Private bankers to register in auditor general's department. Every stock broker, bill broker, exchange broker and private banker in this Commonwealth,

²Act of June 13, 1901, P. L. 559, which amended the Act of June 27, 1895, P. L. 396.

³Pgh. v. Coyle & Co., 165 Pa. 61 (1894).

whether the business be conducted by any individual or more than one person in partnership shall, within three months after the passage of this act, and all others who shall hereafter engage in such business in this Commonwealth, within sixty days after they commence the same, make a report to the auditor general, in writing and under oath or affirmation, setting forth the name of the person so employed, if an individual, or if a partnership, the names of all the individuals composing the same, and the name of the firm, the location or place where such business is transacted, and the amount of capital invested therein, if any.⁴

§ 904. Penalty for not reporting or registering. Any such stock broker, bill broker, exchange broker or private banker in this Commonwealth who shall neglect or refuse to make the return and report required by the first and second sections of this act shall, for every such neglect or refusal, be subject to a penalty of one thousand dollars, which penalty shall be collected on an account settled by the accountant officers as taxes on bank dividends are now settled and collected, and shall not be relieved from paying the amount which he is liable to pay to the Commonwealth under the provisions of the first section of this on account of his having been required and compelled to pay the said penalty.⁵

The auditor general be and he is authorized and required to examine all cases of penalty incurred under the third section of the act of which this is a supplement, and upon payment of a tax due unto the Commonwealth, by any of the parties incurring the same, the collection of the penalty therein named shall be canceled upon the payment of costs by defendant.⁶

Private bankers who fail to make a return of the profits of their business, and also a report of their names, places of business and capital employed, are liable to the penalty imposed for each neglect and not for a single penalty as for one offense.⁷

§ 905. Payment of tax does not relieve from payment of tax on personal property. The payment by private bankers of the tax on their receipts does not relieve them from taxa-

⁴Sec. 2, Act of June 27, 1895, P. L. 396.

⁵Sec. 3, Act of June 27, 1895, P. L. 396.

⁶Sec. 1, Act of May 3, 1864, P. L. 701.

⁷Com. v. Cooke, 50 Pa. 201 (1865).

tion on the judgments, mortgages, etc., held by them on which they are otherwise taxable.⁸

§ 906. Tax in addition to license fees. . . . private bankers shall be required to pay license fees as heretofore, in addition to the amounts which they shall be required to pay under the provisions of this act.⁹

⁸Com. v. McKean County, 200 Pa. 383 (1901).

⁹Sec. 4, Act of May 16, 1861, P. L. 709. See § 1167.

CHAPTER XLV.

MISCELLANEOUS STATE TAXES PAID DIRECTLY TO THE STATE TREASURER.

§ 907. Tax on gross receipts of notaries public.

908. Tax on sales of fertilizers.

§ 907. Tax on gross receipts of notaries public. All fees which are now chargeable and receivable by the notaries public of the city of Philadelphia shall be increased fifty per centum; that the several notaries public shall make return, under oath, annually, as now required by law; and in lieu of the tax now imposed on these officers, each and every notary public shall pay into the treasury of the Commonwealth, on or before the thirty-first day of December, in each and every year, five per centum of the gross amount of his receipts, respectively; and in case of the neglect or refusal of any notary public to comply with the provisions of this act, for thirty days after the time fixed by law for making said returns, the commission of such delinquents shall be judged and held as forfeited and void, and the governor may appoint another person instead of said delinquent: Provided, that the increase authorized by this act shall not relate to the fees for the acknowledgment of deeds and mortgages.¹

The Act of April 14, 1840, § 3, P. L. 335, subjected notaries public to the provisions of the Act of March 10, 1810, P. L. 79, which required all prothonotaries, registers of wills, and recorders of deeds to keep an account of all fees received by them, and to annually furnish the auditor general with a copy thereof, and to pay to the use of the Commonwealth fifty per centum of their receipts in excess of \$1,500 per annum. The foregoing Act of May 20, 1865, which relates only to notaries in Philadelphia, does not seem to repeal said provision.

From this it would seem that notaries outside of Philadelphia,

¹Act of May 20, 1865, P. L. 846.

as well as those within, should make annual returns to the auditor general, and pay for the use of the Commonwealth fifty per centum on all their receipts in excess of \$1,500 per annum; but such reports are not required, only those notaries public doing business in Philadelphia County making returns to the auditor general. It is, however, improbable that any notary outside of Philadelphia receives fees in excess of \$1,500 in any one year.

§ 908. Tax on sales of fertilizers. In addition to the statement required by section two of this act, every manufacturer or importer of commercial fertilizers shall, on or before the first day of January of each year, or before offering them for sale in this Commonwealth, file annually with the secretary of agriculture an affidavit showing the amount of each brand of fertilizer, having a distinct trade-name, sold within the Commonwealth during the last preceding year; and if the said amount shall be one hundred tons or less, he or they shall pay or cause to be paid to the secretary of agriculture the sum of fifteen dollars for each and every brand of such commercial fertilizer, having a distinct trade name, sold within the state during the last preceding year; and if the said amount shall exceed one hundred tons, and be less than five hundred tons, he or they shall pay the sum of twenty dollars, as aforesaid; and if the said amount shall be five hundred tons or more, he or they shall pay the sum of thirty dollars, as aforesaid. If such manufacturer or manufacturers, importer or importers, shall not have made any sales within the Commonwealth during the preceding year, he or they shall pay the sum of fifteen dollars upon each such brand, as aforesaid: Provided, that all monies so received shall be immediately paid by the secretary of agriculture into the state treasury, for the use of the Commonwealth.²

The term "commercial fertilizers," as used in this act, shall be construed to mean any and every substance imported, manufactured, prepared, or sold for fertilizing or manuring purposes, except the dung of domestic animals, marl, lime, and wood-ashes, and not exempt by the provisions of section one of this act.³

The foregoing act repeals the Act of March 25, 1901, P. L. 57, under the provisions of which the money collected from the tax

²Sec. 3, Act of May 1, 1909, P. L. 344.

³Sec. 7, Act of May 1, 1909, P. L. 344.

formed a special fund from which to pay the cost of sampling and analyzing fertilizers.

The first section of said Act of 1901, provided that the act should not apply to fertilizers which did not contain nitrogen, potash or phosphoric acid, but this provision is omitted from said section of the foregoing act.

CHAPTER XLVI.

REVENUES COLLECTED BY COUNTY OFFICERS AND BY THEM PAID INTO THE STATE TREASURY.

§ 909. Revenues collected by county officers and by them paid into the state treasury. The following revenues are levied and collected by county officers and by them paid into the state treasury:

1. Tax on mortgages, judgments, moneys at interest, annuities of over \$200 per annum, and public vehicles used for hire.
2. Collateral inheritance tax.
3. Licenses.
 - a. Mercantile.
 - b. Liquor, of all kinds.
 - c. Brokers'.
 - d. Theatre.
 - e. Auctioneers'.
 - f. Billiards, etc.
 - g. Eating house.
 - h. Peddlers'.
4. Tax on writs, wills, deeds, etc.

These taxes and licenses, with the exception of liquor licenses, will be considered in the order in which they are named.

CHAPTER XLVII.

TAX ON PERSONAL PROPERTY.¹

- § 910. History.
- 911. Imposition of the tax—Classes of personal property subject thereto.
- 912. Additional subjects taxable—Public vehicles—Annuities of over two hundred dollars.
- 913. Discussion of the tax.
- 914. The tax is constitutional.
- 915. Exemption from county and other taxation of property subject to the tax on personal property.
- 916. "All other moneyed capital."
- 917. Obligations of public or private corporations not to be included in returns.
- 918. Returns of corporations of personal property held by them.
- 919. Tax on personal property held by trustees.
- 920. Miscellaneous subjects taxable and not taxable.
- 920a. Articles of agreement and accounts bearing interest.
- 921. Personal property exempt from payment of tax.
- 922. Assessment of tax—Taxables to make sworn returns of personal property.
- 923. Oath to return—Penalty for making false return.
- 924. Assessors to administer oath without charge—Penalty for making charge.
- 925. Assessors to make returns for taxables refusing to make the same—Revision of estimated returns—Addition of fifty per centum penalty.
- 926. When sworn returns may be substituted for estimated returns.
- 927. Auditor general to make estimated returns when.
- 928. Penalty for conspiring to make estimated returns for insufficient amounts.
- 929. Recorders of deeds to keep daily record of mortgages, etc., and file the same with county commissioners monthly.
- 930. Recorders of deeds to furnish boards of revision of taxes with names and addresses of mortgagees, assignees, etc.
- 931. Prothonotaries and clerks of courts of common pleas to keep daily record of bonds, judgments, etc., and file the same monthly with the county commissioners.

¹This chapter should be read in connection with Chapter XXXVI, relative to the tax on corporate loans.

932. County commissioners to transmit statement of mortgages, etc., owned by non-residents to commissioners of counties wherein the mortgagees are domiciled.
933. County commissioners to furnish assessors with statement of mortgages, etc., owned by taxables in each township or ward.
934. Assessors to compare returns of taxables with statements furnished by county commissioners.
935. County commissioners to increase amounts returned as taxable when—Notification thereof.
936. Penalty for wilful failure of commissioners and other officers to perform duties imposed.
937. Return of three-fourths of tax to counties—County treasurers' commission on payment of tax to state treasurer.
938. Auditor general to furnish blank returns, etc., to county commissioners.
939. Collection of tax by counties—Payment to state treasurer—Penalty for delay in payment—Commissions to county and city treasurers.
940. Collection and payment of the tax in Philadelphia.
941. Counties liable for the payment of the tax.
942. Contracts for the payment of the tax by borrowers of money illegal.
- 942a. No abatement for prompt payment of tax.
943. Establishment of board of revenue commissioners.
944. Boards of revision of taxes and county commissioners to furnish board with statements of assessments, and to answer inquiries addressed to them by board.
945. Board to equalize valuations of property taxable for state purposes.
946. Board to file record of statement of adjusted valuations as fixed by it.
947. State treasurer to transmit copies of adjusted valuations to county commissioners, and issue his precept for the collection of the tax.
948. Appeal to board from adjusted valuations.
949. Appeal to court of common pleas of Dauphin County from final action of the board.
950. Procedure on appeal to court of common pleas of Dauphin County.
951. Court to ascertain amount of any errors and certify same to auditor general and state treasurer, who shall give proper credits.
952. Appeal to court not to suspend collection of the tax.
953. Board to keep a journal and report to Legislature.
954. Collection and payment of tax when aggregate valuation is reduced.
955. Compensation of members of board.

§ 910. **History.** The state tax on personal property was first imposed by Act of March 25, 1831, P. L. 206, which provided that the following classes of personal property should be subject to taxation for state purposes at the rate of "one mill on every dollar thereof, to be assessed in the same manner as county rates and levies," viz: Ground-rents, moneys at interest, debts due from solvent debtors, whether by promissory note (except bank-notes), penal or single bill, bond, judgment, mortgage, and stocks in corporations (wherein shares have been subscribed in money) on which any dividend or profit is received by the holder, and public stocks (except those issued by this Commonwealth), and all pleasure carriages kept for use. The twelfth section of said act provides that the act shall be in force for five years from the date thereof. The reason for thus limiting the collection of the tax to five years was that it was then generally believed that the earnings of the great public works then in course of construction (canals, railroads, etc.) would, by the expiration of that time, defray all expenses of the state government and make the further imposition of the tax unnecessary.

The said Act of March 25, 1831, was repealed just before the expiration of the limit fixed therein, by the Act of February 18, 1836, P. L. 36, which act also provided for the incorporation of the United States Bank as a state corporation, its charter from the general government having then expired. The sixth section of this act provided that the said bank should pay to the Commonwealth two million dollars "in consideration of the privileges granted by this act, and in lieu of all taxes on dividends." In view of the anticipated receipt of this money it was not thought necessary to continue the imposition of the tax, although the expected revenues from the public works had not materialized, and especially as the state soon afterward received more than a million dollars from the general government, being its share of the surplus in the United States treasury, divided among the states by act of Congress, of the prospect of which division there probably was some intimation at the time of the passage of the said Act of 1836.

At the passage of the Act of February 18, 1836, therefore, the state tax on personal property, as originally created, was wholly abolished, and with it all legislation relating to said tax. This point should be borne in mind, since references are sometimes

made to such legislation as applicable to the tax on personal property created by subsequent enactments. It is evident, however, that when the tax was abolished, all legislation relative thereto fell with it, and no such legislation is now in force, unless revived by subsequent acts.

The second section of the Act of June 11, 1840, P. L. 612, provides that the county commissioners of each county shall add to the county rates and levies, until the year 1846, one mill upon the actual value thereof, for the use of the Commonwealth.

"And upon all personal estate and property hereinafter described, owned or possessed by any person whatever; that is to say, on all mortgages, moneys at interest, debts due from solvent debtors, whether by promissory note (except notes or bills for goods sold and delivered and bank-notes), penal or single bill [or] judgment; on all stocks or shares owned or held by individuals in this Commonwealth, in any bank, institution, or company incorporated by any other state or territory, on all loans or investments on interest, to citizens of other states, owned or held by individuals in this Commonwealth, and upon all public loans or stocks whatsoever, except those issued by this Commonwealth, owned or held as aforesaid, one-half mill on every dollar of the value thereof, on which one per cent. per annum dividend or profit may accrue to or be received by the owner or holder thereof, and an additional half mill on every dollar of the value thereof for every additional one per centum of any interest, dividend, or profit accruing to or received by such owner or holder. And upon all household furniture, including gold and silver plate owned and kept for use by any person or persons, corporation or corporations, exceeding in value the sum of three hundred dollars, five mills upon every dollar of the value thereof on such excess. Upon pleasure carriages owned and kept for use, one per cent. upon every dollar thereof. Upon watches owned and kept for use as follows: on gold lever or other gold watches of equal value; each one dollar; upon every other description of gold watches and upon silver lever watches or other silver watches of like value, seventy-five cents each; upon every other description of watches of the value of twenty dollars or upwards, fifty cents each. Upon all salaries and emoluments of office, created or held by virtue of any law of this Commonwealth, one per cent. upon every dollar of the value thereof. . . ."

This act, it will be noted, is the first which relates to the state tax on personal property as it now exists. The seventh section of this act provides that the treasurers of counties shall be allowed one per cent. upon the amounts of this tax respectively paid by them into the treasury of the Commonwealth; and this provision is still in force. The ninth section of the Act of May 4, 1841, P. L. 310, amends the Act of 1840 as to the tax on salaries and emoluments of office.

The Act of July 27, 1842, P. L. 444, provides:

"Section 7. That the county commissioners of each county of this Commonwealth shall be and they are hereby authorized and required, at the time of assessing county rates in the present year, and at the usual period of making the same, annually thereafter, in addition to the increase at present required by law, to add to the county rates and levies, for the use of the Commonwealth, upon all real and personal property now made taxable for state purposes, one mill on every dollar of the value thereof: Provided, that in the assessment of the tax imposed by this section, all stocks, mortgages, and other securities shall be assessed at the actual value thereof."

By a curious blunder in the drawing of this act, the above provision of the seventh section is re-enacted, in almost the exact language, in § 16 of the same act, with a different proviso, which is as follows:

"Provided, that this act, so far as it relates to imposition of increase of taxation, shall not extend beyond the assessment and collection for one year."

And the words "and at the usual period of making the same, annually thereafter" are omitted from the body of the section.

The different measures adopted by the state since 1840 not having produced the necessary revenues to enable it to meet the enormous expenses growing out of the construction of the public works, the Act of April 29, 1844, P. L. 486, was passed, which may be said to be the foundation of the present system of state taxation. Its thirty-second section, P. L. 497, provided as follows:

"And whereas, it is necessary that provision be made for the payment of the interest upon the state debt; therefore, be it further enacted, that from and after the passage of this act all real estate, to wit, houses, lands, lots of grounds, and ground-

rents . . . and all other real estate not exempt by law from taxation; also all personal estate, to wit, horses, mares, geldings, mules, and neat cattle over the age of four years; also all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment; also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, except notes or bills for work or labor done, and bank notes; also all shares or stock in any bank, institution, or company, now or hereafter incorporated by or in pursuance of any law of this Commonwealth, or of any other state or government; and all shares of stock or weekly deposits in any unincorporated saving fund institution, and all public loans or stocks whatsoever, except those issued by this Commonwealth, and all money loaned or invested on interest in any other state; also all household furniture, including gold and silver plate, owned by any person or persons, corporation or corporations, when the value thereof shall exceed the value of three hundred dollars; also all pleasure carriages, both of two and four wheels; salaries and emoluments of office, all offices and posts of profit, professions, trades, and occupations, except the occupation of farmers, together with all other things now taxable by the laws of this Commonwealth, shall be valued and assessed and subject to taxation for the purposes in this act mentioned, and for all state and county purposes whatsoever."

Section 4 of the Act of April 16, 1845, P. L. 532, provided for the taxation of the public loans and stocks issued by the Commonwealth (exempted by prior acts) at the rate of one-half mill on each dollar of the value thereof, on which one per cent. per annum of interest shall accrue to the holder, and an additional half mill for every additional one per cent. of interest, the said tax to be deducted by the state treasurer from the interest paid on such public loans.

The Act of April 22, 1846, P. L. 486, provided:

"Section 1. That the county commissioners of each and every county in this Commonwealth are hereby authorized and required, annually hereafter, at the usual period of making county rates and levies, to assess or cause to be assessed, for the use of the Commonwealth, upon all stages, omnibuses, hacks, cabs, and other vehicles used for transporting passengers for hire, used or possessed within this Commonwealth, by any person or persons,

or by any corporate body or bodies, and upon all annuities over two hundred dollars, except those granted by this Commonwealth or by the United States, and upon all property, real or personal (not taxed under existing laws), held, owned, used, or invested by any person, company, or corporation, in trust for the use, benefit, or advantage of any other person, company, or corporation, excepting always such property as shall be held in trust for religious purposes, three mills upon each and every dollar of the value thereof."

The Act of March 15, 1847, P. L. 396, provided that the Act of April 22, 1846, should "not be so construed as to impose a tax on the running or book accounts of merchants or others, for goods sold or work done."

The Act of April 25, 1850, P. L. 572, provided:

"Section 22. That hereafter no law of this Commonwealth rendering moneys owing by solvent debtors liable to be assessed and taxed for any purpose, shall be construed and held to make the same liable to be assessed and taxed for *borough and township*, purposes, but the same shall be exempt from any charge, tax, or assessment for any such purpose. . . ."

The Act of May 18, 1857, P. L. 571, reduced the rate of the state tax on personal property from three mills on the dollar to two and a half mills.

The Act of April 4, 1868, P. L. 61, provided:

"That all mortgages, judgments, recognizances, and moneys, owing upon articles of agreement for the sale of real estate, made and executed after the passage of this act, shall be exempt from all taxation except for state purposes. . . . Provided, that nothing in this act shall be construed to apply to mortgages, judgments, or articles of agreement given by corporations: Provided, that this act shall only apply to the counties of Berks, Schuylkill, Luzerne, Clearfield, Allegheny, York, Delaware, Montgomery, Chester, Lancaster, Huntingdon, Fulton, Bedford, Blair, Lebanon, Clinton, Carbon, Monroe, Lehigh, Mifflin, Westmoreland, Northampton, Juniata, Somerset, Indiana, Greene, Elk, Forest, Franklin, Perry, Cumberland, Dauphin, Lawrence, Lycoming, Union, Snyder, Erie, Crawford, Bucks, McKean, Fayette, Philadelphia, and Mercer." The Acts of March 18, 1869, P. L. 415; April 10, 1869, P. L. 850, and April 13, 1869, P. L. 901, extend the provisions of said act to the counties of

Susquehanna, Armstrong, Pike, Centre, and Wayne. Also extended to Washington County by the Act of February 12, 1870, P. L. 144, and to Venango County by the Act of March 1, 1870, P. L. 278.

The Act of June 2, 1871, P. L. 281, repeals the provisions of the Act of 1844 and subsequent acts imposing taxes for state purposes on salaries or emoluments of public offices, and on incomes of tradesmen, occupations and professions, leaving the latter subject to taxation for local purposes only, as before the passage of the Act of 1844.

The Act of April 9, 1873, P. L. 68, provided:

- "That all laws and acts of Assembly, exempting the loans, bonds, or other evidences of indebtedness of, or issued by, any county, city, borough, or incorporated district of the Commonwealth, from the payment of taxes for the use of the Commonwealth, be and the same are hereby repealed, so far as provides for such exemption; and all such loans . . . heretofore or hereafter issued or existing, shall be liable for the payment of the taxes now or hereafter imposed by law for the use of the Commonwealth upon public loans or other moneys bearing interest: Provided, that this act shall not apply to any bonds negotiated into the hands of innocent holders."

The Act of March 24, 1877, P. L. 44, provided:

"That the scrip, bonds, and certificates of indebtedness of any county of this Commonwealth, owned by any public corporation within such county, and the income from which is by law appropriated to the support of the poor and the maintenance of the public roads of such county, be and the same are hereby exempted from taxation for state purposes."

The Act of June 7, 1879, P. L. 120, § 17, was the first to bring together the different subjects made taxable by the Act of 1844 and subsequent acts (and not afterwards exempted) and to provide one general measure applicable to all such classes of personal property. This act made such classes of property taxable only when held by "any person or persons," and the courts held that this did not apply to such property held by corporations: Fox's Appeal, 112 Pa. 337. The act, moreover, neglected to tax trust funds. It also provided that all mortgages, judgments, etc., should be exempt from all taxation except for state purposes.

The Act of June 10, 1881, P. L. 99, was, in all important respects, like that of 1879, in this regard, except that it changed the rate of taxation from three mills, as provided by the Act of 1879, to four mills.

The Act of June 30, 1885, P. L. 193, was a codification and re-enactment, with modifications, of all previous acts upon the subject, not only as to the tax, but to the machinery for collecting the same, as well. Most of its provisions were re-enacted by the Act of June 1, 1889, now in force. The Act of 1885 reduced the tax to three mills, as before the passage of the Act of 1881; and, like the Acts of 1879 and 1881, provided for the imposition of the tax only on property owned or possessed by "any person or persons," and, also like the other said acts, did not provide for the payment of tax on trust funds. The Acts of 1879, 1881, and 1885, each contain a provision that mortgages, judgments, etc., shall not be taxable except for state purposes. This provision was omitted from the later Acts of 1889 and 1891, and it is, therefore, claimed by some persons that mortgages, bonds, etc., are now liable to taxation for county purposes in the seventeen counties not enumerated in the Act of 1868, and its supplements.²

§ 911. Imposition of the tax—Classes of personal property subject thereto. From and after the passage of this act all personal property of the classes hereinafter enumerated, owned, held, or possessed by any person, persons, copartnership, or unincorporated association or company, resident, located or liable to taxation within this Commonwealth, or by any joint stock company or association, limited partnership, bank, or corporation whatsoever, formed, erected, or incorporated by or under or in pursuance of any law of this Commonwealth, or of the United States, or of any other state or government, and liable to taxation in this Commonwealth, whether such personal property be owned, held, or possessed by such person or persons, copartnership, unincorporated association, company, joint stock company or association, limited partnership, bank, or corporation, in his, her, their, or its own right, or as active trustee, agent, attorney in fact, or in any other capacity for the use, benefit or advantage of any other person, persons, copartnership, unincorporated association, company, joint stock company, or association, limited partnership, bank, or corporation, is hereby made tax-

²See § 51.

able annually for state purposes at the rate of four mills on each dollar of the value thereof, and no failure to assess or return the same shall discharge such owner or holder thereof from liability therefor to the Commonwealth, that is to say:

- [1.] All mortgages,
 - [2.] All moneys owing by solvent debtors, whether by promissory note or penal or single bill, bond, or judgment;
 - [3.] All articles of agreement and accounts bearing interest;
 - [4.] All public loans whatsoever, except those issued by this Commonwealth or by the United States;
 - [5.] All loans issued by, or shares of stock in, any bank, corporation, association, company, or limited partnership, created or formed under the laws of this Commonwealth, or of the United States or of any other state or government, including car-trust securities and loans secured by bonds or
 - [6.] Any other form of certificate, or evidence of indebtedness, whether the interest be included in the principal of the obligation or payable by the terms thereof,
- “Except* shares of stock in any corporation or limited partnership liable to the capital-stock tax imposed by the twenty-first section of this act, or relieved from the payment of tax on capital stock by said section;
- [7.] All moneys loaned or invested in other states, territories, the District of Columbia, or foreign countries;
 - [8.] All other moneyed capital in the hands of individual citizens of the state:

Provided, that this section shall not apply to bank-notes or notes discounted or negotiated by any bank or banking institution, savings institution, or trust company:

And provided, that the provisions of this act shall not apply to building and loan associations, or to savings institutions having no capital stock: Provided, that nothing herein contained shall be construed to relieve or exempt individual depositors in savings institutions having no capital stock from any taxation to which under existing laws such depositors may be subject: And also provided, that if at any time, either now or hereafter, any persons, individuals, or bodies corporate have agreed or shall hereafter agree to issue his, their or its securities, bonds, or other evidences of indebtedness clear of and free from the said four mills tax herein provided for, or have agreed or shall hereafter

agree to pay the same, nothing herein contained shall be so construed as to relieve or exempt him, it or them from paying the said four mills tax on any of the said such securities, bonds, or other evidences of indebtedness as may be held, owned by or owing to the said savings institution having no capital stock: Provided also, that this section shall take effect on the first day of January, Anno Domini, one thousand, nine hundred and ten.³

§ 912. Additional subjects taxable—Public vehicles—Annuities of over two hundred dollars. The county commissioners or board of revision of taxes of each and every county in this Commonwealth are hereby authorized and required, annually, hereafter, at the usual period of making county rates and levies, to assess or cause to be assessed, for the use of the Commonwealth, upon all stages, omnibuses, hacks, cabs, and other vehicles used for transporting passengers for hire, except steam and street passenger railway cars, owned, used, or possessed within this Commonwealth by any person or persons or by any corporate body or bodies, and upon all annuities yielding annually over two hundred dollars, a tax of four mills, upon each and every dollar of the value thereof: Provided also, that this section shall take effect on the first day of January, Anno Domini one thousand eight hundred and ninety-two.⁴

§ 913. Discussion of the tax. The tax on personal property is the only property tax imposed directly on the individual citizens of Pennsylvania, if we consider the collateral inheritance tax a tax on the right of succession. See § 957.

It is imposed wholly on choses in action, such as bonds, mortgages, shares of stock, moneys at interest, etc., and not in any case upon chattels, except in the case of vehicles used in the transportation of passengers for hire.

All personal property subject to the payment of the tax is exempt from other taxation, except in the case of said vehicles used for the transportation of passengers for hire.

³Act of May 1, 1909, P. L. 298, amending § 1, of the Act of June 8, 1891, P. L. 229, which amended § 1 of the Act of June 1, 1889, P. L. 420. The preamble to the Act of June 8, 1891, will be found in the last note to § 777.

⁴Sec. 2 of the Act of June 8, 1891, P. L. 229, which amended § 14 of the Act of June 1, 1889, P. L. 420. Public vehicles and annuities of over two hundred dollars were first made taxable for state purposes by the Act of April 22, 1846, P. L. 486.

The tax is assessed and collected through the medium of the same officers who assess and collect county taxes.

The rate of the tax is four mills upon the actual value of the property taxable, and hence does not vary with the needs of the state for revenue.

§ 914. **The tax is constitutional.** The Act of June 8, 1891, P. L. 229, amended by the Act of May 1, 1909, P. L. 298, is not in conflict with the constitution because of any defect in its title, nor for any other reason,⁵ and the prior acts of June 7, 1879, P. L. 112,⁶ June 30, 1885, P. L. 1893,⁷ and June 1, 1889, P. L. 420,⁸ imposing said tax were constitutional.

§ 915. **Exemption from county and other taxation of property subject to the tax on personal property.** All property subject to the payment of the state tax on personal property except vehicles used for transporting passengers for hire is exempt from all county and other taxation.⁹ Vehicles used for transporting passengers are not and never were taxable for county or township purposes, but they are taxable for local purposes in cities of the second¹⁰ and third¹¹ classes, in boroughs¹² and in townships of the first class.¹³ Annuities were never made taxable for any other than state purposes.

§ 916. **"All other moneyed capital."** The provision for the taxation of "all other moneyed capital in the hands of individual citizens of the state," although it appears to cover all capital not previously enumerated, has not, in the operation of this law, proved to be applicable to the taxation of any property. The accounting officers at one time attempted to tax paid-up policies of insurance, as "other moneyed capital," but the attorney general held that to be taxable, a subject must be expressly enumerated in the act,¹⁴ so that the general provision referred to appears not to be of wide application, it having been doubtless inserted, as suggested by Mr. Shapley, in his "Revenue

⁵Com. v. Wilkes-Barre & Scranton Railway Co., 162 Pa. 614 (1894).

⁶Com. v. Martin, 107 Pa. 185 (1884).

⁷Fox's Appeal, 112 Pa. 337 (1886).

⁸Fidelity Ins. T. & D. Co. v. Loughlin, 139 Pa. 612 (1891).

⁹See § 51.

¹⁰See § 441.

¹¹See § 381.

¹²See § 358.

¹³See § 309a.

¹⁴Taxation of Life Insurance Policies, 17 Pa. C. C. 183 (1895).

Act of 1889," "in order to give a seeming compliance with the acts of Congress . . . which provide that shares in national banks shall not be taxed at a greater rate than 'other moneyed capital in the hands of individual citizens of such state.'"¹⁵

§ 917. Obligations of public or private corporations not to be included in returns. . . . Provided, that the taxable person, co-partnership, unincorporated association, joint stock association, limited partnership, corporation or other person making the return aforesaid, shall not include in said return the obligations of public or private corporations, the tax upon which is required by law to be collected from the holder of such obligations and paid into the state treasury by the corporation, it being the true intent and meaning of this act that the provisions of the law in force at the time of the passage of this act relating to the collection of the tax upon such obligations shall remain unaffected by the present act.¹⁶

§ 918. Returns of corporations of personal property held by them. The second section of the Act of June 1, 1889, *infra*, § 922, provides that all corporations and limited partnership and joint stock associations shall make sworn returns of the personal property held by them, the same as individuals, but corporations doing business in more than one county are required to make their returns in only those counties wherein their principal offices are located, respectively. As elsewhere stated, however,¹⁷ mortgages, bonds, etc., owned by corporations paying the tax on capital stock, "in which the whole body of stockholders or members as such have the entire equitable interest in remainder," are exempt from all further taxation and should not be included in the returns of such corporations.

The shares of stock of corporations paying a capital stock tax, and of manufacturing companies exempted from the payment thereof, are not taxable in the hands of the holders thereof, and therefore should not be included in their returns, either by corporations or by individuals.¹⁸

National banks, and state banks and savings institutions paying the four mills tax on or before the first day of March in each

¹⁵See § 824.

¹⁶Sec. 2, Act of June 1, 1889, P. L. 420. See § 841.

¹⁷See § 797. As to personal property held by manufacturing companies, see § 812.

¹⁸See §§ 798, 911.

year, are not required to make return of the bonds, mortgages, etc., held by them;¹⁹ and trust companies paying the tax on the shares of their stock on or before the same date are entitled to the same exemption.²⁰

§ 919. Tax on personal property held by trustees.²¹ The first section of the Act of June 1, 1891, *supra*, imposes a tax on personal property of the enumerated classes held by any persons or corporations as "active trustees . . . for the use, benefit or advantage of any other person."

By "persons" therein is meant a particular individual having a beneficial ownership in the property, who could claim its use, benefit or advantage and enforce the trust in his favor. Whenever the fund held in trust is not for a particular person, but for charitable or religious objects in which no particular individual or person has any legal or equitable rights, the beneficiary being selected from year to year at the discretion of the trustee out of indefinite classes of persons, such fund is not taxable.²²

Bonds, mortgages, etc., held by resident trustees for the benefit of non-resident cestuis que trustent, are taxable in Pennsylvania.²³

Corporations paying the tax on capital stock are relieved from further taxation on the mortgages, bonds, etc., held by them in their own right only,²⁴ but such obligations as are held by them as trustees, agents, attorneys in fact "or in any other capacity for the use, benefit or advantage of any other person," corporation, etc., are taxable.²⁵ Hence, the obligations of individuals so held by them should be returned for payment of the personal property tax, while such obligations, so held, which are issued by corporations, will be taxed through the deduction by the treasurers of the corporations issuing the same of the tax on corporate loans from the interest paid thereon.

§ 920. Miscellaneous subjects taxable and not taxable. Bills receivable, held by an assignee on a voluntary assignment in

¹⁹See § 871.

²⁰See § 897.

²¹See § 16.

²²General Assembly of Presbyterian Church v. Gratz, 139 Pa. 497 (1891).

²³Guthrie v. Pittsburgh, Cinn. & St. L. R. R. Co., 158 Pa. 433 (1893); Phila. Insurance, Trust, etc. Co.'s Appeal, 17 W. N. C. 446 (1886).

²⁴See § 797.

²⁵See § 911.

trust for the benefit of creditors, were held to be not taxable under the Act of April 22, 1846.²⁶

When a testator directs a portion of his estate consisting of bonds, mortgages, etc., to be set aside as a fund the interest on which shall be paid to his widow during her natural life or widowhood, the said fund is taxable for state purposes, and the tax is payable out of the interest on the same;²⁷ but a widow's dower is not taxable as personal property.²⁸

The distinction between these cases seems to be that in the case of a widow's dower there is no certain fund from which it arises. It is paid from the estate, or the income thereof, which may and doubtless does already pay a tax, whereas, when a specific fund is set aside for the widow's support, such fund would otherwise wholly escape taxation if it were exempted from the tax on personal property.

Money due on an article of agreement for the sale of land is taxable as "moneys at interest."²⁹

Bank deposits bearing interest are taxable as accounts bearing interest, but such deposits not bearing interest are not taxable.

Personal property in the hands of an executor or administrator is taxable.³⁰

Moneys at interest are taxable at the owner's domicile and not at the place where the moneys are at interest.³¹

Mortgages, bonds, etc., are taxable in the hands of the holders, though payable in installments, and whether they bear interest or not.³²

Mutual fire insurance companies are subject to the tax on personal property,³³ and so, prior to the passage of the Act of May 1, 1909, P. L. 298, were savings fund societies without capital stock.³⁴

Paid-up life insurance policies are not taxable.³⁵

²⁶*Lancaster City School Directors v. Rathbon*, 30 Pa. 533 (1858).

²⁷*Spangler v. York County*, 13 Pa. 322 (1850).

²⁸*Deitz v. Beard*, 2 Watts 170 (1834).

²⁹*Voegtly v. Allegheny School Directors*, 1 Pa. 330 (1845).

³⁰*Wister's Estate*, 7 Pa. C. C. 325 (1889).

³¹*Dauphin County v. Banks*, 1 Pears. 40.

³²*Perry County v. Troutman*, 144 Pa. 361 (1891).

³³*Fire Insurance Co. v. Northampton County*, 9 Pa. 413 (1848).

³⁴*Phila. Savings Fund Society v. Yard*, 9 Pa. 359 (1848). See § 911.

³⁵*Tax on Life Insurance Policies*, 17 Pa. C. C. 183 (1895).

§ 920a. Articles of agreement and accounts bearing interest. An agreement was made with the lessee of coal lands that he should mine a certain amount of coal per annum at a royalty of so much per ton, and if said lessee in any one year failed to mine said full amount, the royalty thereon was to be calculated, the amount paid for the current year deducted, and interest allowed on the balance, such interest to be continued until the deficiency upon which the interest was based should be mined, held, that the balance due by the lessee on account of such unmined deficiency was due on an "article of agreement and account bearing interest," and, therefore, taxable.³⁶

§ 921. Personal property exempt from payment of tax. The following is a recapitulation of the classes of personal property which are not subject to the payment of the tax on personal property:

1. Obligations held in their own right by corporations paying a capital stock tax; when the whole body of stockholders or members has the entire equitable interest in such obligations in remainder.³⁷
2. Shares of stock of corporations paying a capital stock tax, or of manufacturing companies exempted from the payment of said tax.³⁸
3. Shares of stock of national and state banks, savings institutions³⁹ and trust companies.⁴⁰
4. Chosés in action held by national banks, and those held by state banks and savings institutions⁴¹ and trust companies⁴² which pay the tax on their shares on or before March 1st in each year.
5. Bank notes and notes discounted or negotiated by banks, savings institutions and trust companies,⁴³ but not notes discounted by private bankers or unincorporated banks.⁴⁴
6. Obligations held and owned by institutions of purely public charity, and trust funds held by churches.⁴⁵
7. Personal property held and owned by building and loan associations, and savings institutions without capital stock.⁴⁶

³⁶Hull v. Luzerne County, 8 W. N. C. 366 (1880). See also Voegtly v. School Directors, 1 Pa. 330.

³⁷See § 797.

³⁸See § 798.

³⁹See § 873.

⁴⁰See § 897.

⁴¹See § 871.

⁴²See § 897.

⁴³See §§ 911, 832a.

⁴⁴See § 832a.

⁴⁵See § 74.

⁴⁶See § 911.

8. Dower, life insurance policies, and obligations given as indemnity against contingent liabilities.⁴⁷

9. Obligations held by non-residents, but not when held for them by resident trustees.⁴⁸

§ 922. Assessment of tax—Taxables to make sworn returns of personal property. The board of revision of taxes in cities co-extensive with counties, shall furnish the assessors of said city annually, and the commissioners of the other counties shall annually furnish the assessors of the several townships, boroughs and cities of the respective counties with blanks in the form prepared and supplied by the auditor general, and it shall be the duty of each of said assessors to furnish a copy of the same to every taxable person, copartnership, unincorporated association, joint stock association and company, limited partnership and corporation in his respective ward, district, borough or township, or to any officer, agent or employee found at the place of business of any such limited partnership or corporation in his ward, district, borough or township, upon which blank each taxable person, co-partnership, unincorporated association, company, limited partnership, joint stock association and corporation, shall respectively make return annually of the aggregate amount of all the different classes of personal property made taxable by the first section of this act, held, owned or possessed by said person, co-partnership, unincorporated association, company, limited partnership, joint stock association or corporation, either in his, her or its own right, or as trustee, agent, attorney-in-fact or in any other capacity, for the use, benefit or advantage of any other person, persons, co-partnerships, unincorporated associations, company, limited partnership, joint stock association or corporation; which return shall be made and sworn or affirmed to by such taxable person, and in the case of co-partnerships, unincorporated associations, and joint stock associations and companies by some member thereof, and in the case of limited partnerships and corporations by the president, chairman or treasurer thereof: Provided, that any corporation, joint stock association or limited partnership doing business in more than one county shall be liable to make such return only in the county in which its principal office within this Commonwealth is situated: . . .⁴⁹

⁴⁷See § 920; Beck's Appeal, 13 D. R. 775 (1904).

⁴⁸Sec. 2, Act of June 1, 1889, P. L. 420.

⁴⁹See §§ 919, 16.

Sworn returns were first required from taxables by the Act of June 30, 1885, P. L. 193.⁵⁰ When personal property was subject to taxation for both county and state purposes, the county assessment was the basis of the state assessment. There was no separate assessment for the imposition of the state tax.⁵¹

The assessors who assess personal property for state taxation are the same assessors who assess property for county, township and borough taxes. The state utilizes throughout the levying and collection of this tax the machinery used for the levying and collection of county taxes.⁵²

It will be noted that the foregoing provision requires each taxable to be furnished with a return blank, but, as a rule, assessors supply such blanks only to persons who, they may have reason to think, are possessed of taxable personal property, and, by this omission, a large amount of personal property escapes taxation.

§ 923. Oath to returns—Penalty for making false returns. The affidavit required to be made by the last preceding section shall be made before the proper assessor or other person authorized to administer oaths, and shall set forth that the facts are full, true and correct to the best of his or her knowledge and belief; and any person or officer who shall wilfully and corruptly make a false and fraudulent return as aforesaid shall be guilty of wilful and corrupt perjury, and upon his or her conviction thereof shall be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment by separate and solitary confinement at labor not exceeding seven years, and thereupon be forever disqualified from being a witness in any matter or controversy.⁵³

Under § 5 of the Act of April 22, 1846, P. L. 486, which is superseded by the above provision, no penalty could be imposed where the taxable had refused to make a written statement and had not authorized the assessor to make one for him.⁵⁴

§ 924. Assessors to administer oath without charge—Penalty for making charge. The several assessors are hereby

⁵⁰See Fox's Appeal, 112 Pa. 337, 356 (1886), as to constitutionality of this requirement.

⁵¹Phila. Contributionship, etc. v. Yard, 17 Pa. 331 (1852).

⁵²Phila. Contributionship, etc. v. Yard, 17 Pa. 331 (1852).

⁵³Sec. 3, Act of June 1, 1889, P. L. 420.

⁵⁴Boyd v. Neely, 1 Chester Co. 330 (1881).

authorized to administer the oath or affirmation to any person or officer making the return prescribed by the preceding sections, for the taking of which oath or affirmation no charge shall be made by the assessor; any assessor who shall accept such return from any person or officer required to make the same without requiring the oath or affirmation of such person or officer as herein provided, or who shall make any charge for administering such oath or affirmation, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be sentenced to a fine not exceeding five hundred dollars.⁵⁵

§ 925. Assessors to make returns for taxables refusing to make the same—Revision of estimated returns—Addition of fifty per centum penalty. Upon the failure or refusal of any taxable person, copartnership, unincorporated association, limited partnership, joint stock association or corporation to make return, properly verified by oath or affirmation, as required by this act, within ten days after being notified to do so, it shall be the duty of the assessor to make a return for such taxable person, copartnership, unincorporated association, joint stock association, limited partnership or corporation from the best information he can obtain; he shall examine the records and lists of judgments and mortgages, returned by the prothonotary and the recorder of deeds and mortgages, under the seventh and eighth sections of this act, in the commissioners' office or office of the board of revision of taxes, or remaining in their respective offices, and assess such defaulting person, copartnership, unincorporated association, joint stock association, limited partnership or corporation with the amounts of all such liens, with interest thereon, and add thereto the amount of all taxable property obtained from all other sources of information; which return the proper county commissioners or board of revision shall have power, and it shall be their duty, to revise and correct, according to the best information they can command from the records in their office or other sources; it shall be their duty to send for a person, persons and papers, and to administer an oath or affirmation to him or them, in such form as shall be prescribed and supplied by the auditor general, to which revised and corrected estimated return the proper county commissioners or board of revision of taxes shall add fifty

⁵⁵Sec. 4, Act of June 1, 1889, P. L. 420.

per centum, and the aggregate amount so obtained shall be the basis for taxation; . . .⁵⁶

An assessor may not make an estimated return of the personal property of a taxable until the expiration of ten days from the receipt by the taxable of the return blank, and, if he does so, and refuses to receive the taxables' return made within said period of ten days, a preliminary injunction to restrain the collection of the tax will be granted.⁵⁷

The above provision for making estimated returns where taxables refuse to make returns themselves, and the addition of the penalty of fifty per centum to such returns, is constitutional, inasmuch as an appeal is allowed from the action of the commissioners imposing the penalty.⁵⁸

When a taxpayer refusing to make a return of taxable property by his silence acquiesces in that made by the assessor, and, having had knowledge of an erroneous assessment, still refuses after the date of the appeal has past to make the corrected return authorized by the act, he is without equity to entitle him to have the collection of the tax restrained by injunction.⁵⁹

A taxable has the right to decline to make a return of personal property for purposes of taxation, and where he does so, and an estimated return of his property is made by the assessor, to which the county commissioners add the penalty of fifty per centum, the sum so fixed stands in place of the return as a basis for taxation, and the county commissioners may not afterwards assess his personal property for said year at a higher amount.⁶⁰

"When a taxpayer refuses to make his own return and by his silence acquiesces in that of the assessor, it may be safely assumed the amount returned, plus the added penalty, does not exceed the sum on which tax is justly payable; and in the absence of more reliable data, that sum may well be taken by the assessor as a safe guide in making a subsequent return, in case the taxpayer does not make it himself."⁶¹

⁵⁶Sec. 1, Act of April 17, 1905, P. L. 186, amending § 5, Act of June 1, 1889, P. L. 420.

⁵⁷Pauli v. Steward, 4 C. P. Rep. 137 (1887).

⁵⁸Fox's Appeal, 112 Pa. 337 (1886); Van Nort's Appeal, 121 Pa. 118 (1888).

⁵⁹Van Nort's Appeal, 121 Pa. 118 (1888).

⁶⁰Williamson's Estate, 153 Pa. 508 (1893).

⁶¹Van Nort's Appeal, 121 Pa. 118 (1888).

The remedy of a taxable for an excessive estimated return made against him is by an appeal to the county commissioners, accompanying the same with a correct return.⁶²

There is no law authorizing the assessment of the tax on personal property after the expiration of the year in which it should have been assessed and the taxable should have paid the same. Where a taxable neglects to make a return for a particular year, and no estimated return is made for him, an assessment for that year may not be made against the taxpayer after the expiration of such year.⁶³

Where a taxable regularly made returns to the assessor of amounts much less than the personal property actually owned by him, and paid tax on the amounts of said returns, the taxing authorities may not in subsequent years substitute reassessments for said returns. "If the returns made were false, the liability of the appellee was to be ascertained in the way pointed out by §§ 11 and 12 of the Act [of June 1, 1889, P. L. 420]. No other mode appears in that act or any other for fixing the liability of a taxable who makes a false return, and no other, therefore, exists. The mode pointed out in the Act of 1889 for fixing liability to the Commonwealth, either upon a failure to make the return or upon a false return, must be pursued each year, for in each year the tax is to be assessed and paid."⁶⁴

§ 926. When sworn returns may be substituted for estimated returns. . . . Provided, that if such taxable person or copartnership, or unincorporated association or company, limited partnership, joint stock association, or corporation, on or before the day fixed for appeals from assessments, shall present reasons, supported by oath or affirmation, satisfactory to the proper county commissioners or board of revision, excusing failure to make a return such as should be made by the assessors, and shall then make such return, the proper county commissioners or board of revision may substitute such return for that returned by the assessors, and corrected as aforesaid, to have a like effect as if no failure to return had occurred. . . .⁶⁵

⁶²Van Nort's Appeal, 121 Pa. 118 (1888).

⁶³Schmuck v. Hartman, 222 Pa. 190 (1908).

⁶⁴Schmuck v. Hartman, 222 Pa. 190 (1908).

⁶⁵Sec. 1, Act of April 17, 1905, P. L. 186, amending § 5, Act of June 1, 1889, P. L. 420.

§ 927. Auditor general to make estimated returns when. Upon the failure or refusal of any taxable person, copartnership, unincorporated association, limited partnership, joint stock association or corporation to make return, properly verified by oath or affirmation, as required by this act, and upon the failure or refusal, at the expiration of any fiscal year, of the assessors and board of revision of taxes or county commissioners to make a return or a revised and corrected estimated return, as herein provided, or should the assessors and board of revision of taxes or county commissioners return a less amount of property than is made taxable by the first section of this act, then it shall be the duty of the auditor general to make a return or a revised and corrected estimated return for such defaulting person, copartnership, unincorporated association, limited partnership, joint stock association or corporation from the best information he can obtain. He shall examine the records and lists of judgments and mortgages, returned by the prothonotary and the recorder of deeds and mortgages, under the seventh and eighth section of this act, in the commissioners' office or office of the board of revision of taxes, and the office of the auditor general, or remaining in their respective offices, and assess such defaulting person, copartnership, unincorporated association, joint stock association, limited partnership or corporation with the amounts of all such liens, with the interest thereon, and add thereto the amount of all taxable property obtained from all other sources of information; and it shall be his duty to send for a person, persons and papers, and to administer an oath or affirmation to him or them, in such form as he shall prescribe, to which return or revised and corrected estimated return the auditor general shall add fifty per centum, and the aggregate amount so obtained shall be the basis for taxation. After such assessment has been made, as aforesaid, by the auditor general, he shall have full power and authority to force the payment of taxes so assessed against such defaulting person or copartnership, or unincorporated association, or company, limited partnership, joint stock association or corporation, and for that purpose to employ counsel, and take such other measures as may be necessary. Whenever the auditor general shall exercise the discretion herein conferred on him, his power and authority in relation thereto shall be absolute: Provided, that if such taxable person or copartnership, or unincor-

porated association, or company, limited partnership, joint stock association or corporation shall, within fifteen days after having been notified by the auditor general of such estimated assessment, present a petition to the said auditor general, showing reasons, supported by oath or affirmation, satisfactory to the auditor general, excusing a failure to make a return such as should be made to the assessors, and shall make such return, the auditor general may substitute such return for that returned by him, to have like effect as if no failure to make return had occurred. Furthermore it shall be the duty of the county commissioners or board of revision of taxes to file with the auditor general copies of all returns made for personal property taxes, and all records in the possession of the county commissioners or board of revision of taxes shall be for the inspection and use of the auditor general.⁶⁶

The foregoing was added by the Act of April 17, 1905, P. L. 186, and is inoperative because of the failure of the Legislature to make an appropriation to carry its provisions into effect.⁶⁷

§ 928. Penalty for conspiring to make estimated returns for insufficient amounts. If any assessor and any taxable person or members of any co-partnership, unincorporated association or company, officer or stockholder or member of any limited partnership, joint stock association or corporation, shall agree or enter into any arrangement or understanding that upon the failure of such taxable person, co-partnership, unincorporated association, company, limited partnership, joint stock association or corporation, to make the return required by the third section of this act to be made, such assessor shall return a less amount of property made taxable by the first section of this act than should have been returned by such taxable person, co-partnership, unincorporated association, company, limited partnership, joint stock association or corporation, the persons entering into such agreement, arrangement or understanding, shall be guilty of conspiracy, and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars, and undergo an imprisonment either at labor by separate or solitary confinement or to simple imprisonment, not exceeding three years, at the discretion of the court.⁶⁸

⁶⁶Sec. 1, Act of April 17, 1905, P. L. 186, amending § 5, of the Act of June 1, 1889, P. L. 420.

⁶⁷State Tax on Personal Prop-

erty, 8 Dauph. Co. Reps. 117 (1905); 31 Pa. C. C. 249.

⁶⁸Sec. 6, of the Act of June 1, 1889, P. L. 420.

§ 929. Recorders of deeds to keep daily record of mortgages, etc., and file the same with county commissioners monthly. From and after the passage of this act, it shall be the duty of the recorder of deeds, mortgages and other instruments of writing, in each and every county and city co-extensive with a county in this Commonwealth, to keep a daily record, separate and apart from all other records, of every mortgage or article of agreement given to secure the payment of money, entered in the office for recording, which said record shall set forth the following information, to wit: The date of the mortgage or agreement, the names of the parties thereto, the just sum of money secured, the precise residence of the mortgagee or person to whom interest is payable, whenever such residence can be ascertained, a brief description of the real estate upon which such mortgage is secured, and the date or several dates when the said sum or portion of the said sum shall become due and payable; and a like daily record of every assignment of a mortgage or an article of agreement, given to secure the payment of money, and also the number of mortgages and agreements, together with the amount of the same, and the names of the parties thereto, which shall have been that day satisfied of record; and it shall be the further duty of the recorder, on the first Monday of each month, to file the aforesaid daily record in the commissioners' office or with the board of revision of taxes of the proper county or city, *and with the auditor general of the Commonwealth,*⁶⁹ and one certificate appended thereto shall be all that shall be required.⁷⁰

§ 930. Recorders of deeds to furnish boards of revision of taxes with names and addresses of mortgages, assignees, etc. For the purpose of obtaining with accuracy the precise residence of all mortgagees, assignees, and persons to whom interest is payable on articles of agreement, it shall be the duty of the recorder of deeds in each county, whenever a mortgage, assignment, or agreement given to secure the payment of money, shall be presented to him for record, to refuse the same, unless the said mortgage, assignment, or agreement has attached

⁶⁹The part of the section in italics is inoperative. State Tax on Personal Property, 31 Pa. C. C. 249 (1905).

⁷⁰Sec. 2, of the Act of April 17, 1905, P. L. 186, which amended § 7 of the Act of June 1, 1889, P. L. 420.

thereto, and made part of said mortgage, assignment, or agreement, a certificate signed by said mortgagee, assignee, or person entitled to interest, or his, her or their duly authorized attorney or agent, setting forth the precise residence of such mortgagee, assignee, or person entitled to interest; said certificate to be recorded with said mortgage, assignment, or agreement; and therefrom the said recorder shall prepare and deliver, at stated intervals, to the proper Board of Revision of Taxes, or other officials charged with the assessment of state tax, a list of said mortgages, assignments, and agreements, with the names and residences of said mortgagees, assignees, or persons entitled to interest, with the amount and date of said mortgages, assignments, and articles of agreement, with the date of recording and the properties upon which the debts are secured.⁷¹

§ 931. Prothonotaries and clerks of courts of common pleas to keep daily records of bonds, judgments, etc., and file the same monthly with county commissioners. It shall be the duty of the prothonotary or clerk of the court of common pleas, in each and every county or city co-extensive with a county in this Commonwealth, forthwith upon the passage of this act, to keep a daily record, separate and apart from all other records, of every single bill, bond, judgment or other instrument securing a debt, entered of record in his office, which daily record shall set forth the following information, to wit: The date of the instrument, the names of the plaintiff and defendant, together with the precise residence of the plaintiff or person to whose use such bill, bond, judgment or other obligation to pay money is marked, whenever such residence can be ascertained; the just sum secured, and the date or several dates when the said sum or portion of the sums shall become due and payable; with the further information whether any of the said bonds or judgments are accompanied with mortgages, and also the number of every single bill, bond, judgment or other instrument securing a debt, together with the amount of same, and the names of the plaintiff and defendant thereto, which shall have been that day satisfied; and it shall be the further duty of the prothonotary or the clerk of the court of common pleas to file the aforesaid daily record of bills, et cetera, in the commissioners' office, or with the board of revision of taxes of the proper county or city, *and with the auditor general of the*

⁷¹Act of April 29, 1909, P. L. 289.

*Commonwealth*⁷² on the first Monday of each month, and one certificate appended thereto shall be all that shall be required.⁷³

§ 932. County commissioners to transmit statement of mortgages owned by non-residents to commissioners of counties wherein the mortgagees are domiciled. It shall be the further duty of the county commissioners or board of revision of taxes, upon obtaining record of the existence within any county or city co-extensive with a county of said mortgages and other obligations, that shall be owned by a person, co-partnership, association, limited partnership, joint stock association or corporation, resident or doing business within this Commonwealth, and not a resident of said county, or in the case of a corporation, limited partnership or company not having its principal office within said county, to transmit a certified statement of said record to the county commissioners or board of revision of taxes of the proper city or county wherein said person is domiciled or wherein said co-partnership, association, limited partnership, joint stock association or corporation does business or maintains its principal office, and also to further transmit to said commissioners or board of revision of taxes a certified statement, whenever it shall appear from the record that said mortgages and other obligations are satisfied, which upon its receipt shall be filed of record by the county commissioners or board of revision of taxes.⁷⁴

§ 933. County commissioners to furnish assessors with statement of mortgages, etc., owned by taxables in each township or ward. It shall be the further duty of the county commissioners or the board of revision of taxes of the proper city or county, upon the receipt of the daily records from the offices of the recorder or prothonotary or clerk, to file the same in their office, and on or before the time of making the annual or triennial assessment in any year, to prepare from the said records a statement or statements, showing as far as practicable the number and amount of said mortgages and all other obligations and names of the parties thereto, in each township or ward in the county, which said statement shall be delivered to the assessor or

⁷²The portion of the section in italics is inoperative. State Tax on Personal Property, 31 Pa. C. 249 (1905).

⁷³Sec. 1, Act of April 17, 1905, P. L. 186, amending § 8 of the Act of June 1, 1889, P. L. 420.

⁷⁴Sec. 9, Act of June 1, 1889, P. L. 420.

assessors of each township or ward respectively before said officers shall enter upon the discharge of their proper duties.⁷⁵

§ 934. Assessors to compare returns of taxables with statements furnished by county commissioners. It shall be the duty of the assessor or assessors, in making up their valuations of money at interest in their respective districts, to compare the return made by each person, co-partnership, association, limited partnership, joint stock association or corporation with the statement furnished them by the county commissioners or board of revision of taxes, and if the amount of said mortgages or other obligations as contained in said statement shall exceed the amount set forth in the return of any person, co-partnership, association, limited partnership, joint stock association or corporation, to note the fact and make return of the same to the commissioners or board of revision of taxes of the proper city or county.⁷⁶

§ 935. County commissioners to increase amounts returned as taxable when—Notification thereof. It shall be the further duty of the county commissioners or board of revision of taxes, upon the returns made to them by the assessors of the several townships, wards and boroughs, in all cases where it shall appear on proving the record, that any person, co-partnership, association, limited partnership, joint stock association or corporation, has returned a less amount of money at interest than appears from the records in possession of the commissioners or board of revision of taxes, thereupon to raise the valuation of the property of said person, co-partnership, association or limited partnership, joint stock association or corporation to the amount set forth in said records, and forthwith to notify the persons, co-partnerships, associations, limited partnerships, joint stock associations or corporations interested of the said increase of valuation, and that the same is subject to be appealed from at the same time and the same manner as the original assessment.⁷⁷

§ 936. Penalty for wilful failure of commissioners and other officers to perform duties imposed by act. Any wilful failure on the part of the county commissioners, board of revision of taxes, ward, borough and township assessors, recorders

⁷⁵Sec. 10, Act of June 1, 1889,
P. L. 420.

⁷⁶Sec. 12, Act of June 1, 1889,
P. L. 420. See § 117.

⁷⁷Sec. 11, Act of June 4, 1889,
P. L. 420.

of deeds, prothonotaries and clerks of courts, to carry out the duties imposed upon them by the several sections of this act, shall be deemed a misdemeanor, and upon conviction thereof the person or persons so failing to comply shall be sentenced to a fine not exceeding five hundred dollars and imprisonment not exceeding one year.⁷⁸

§ 937. Return of three-fourths of tax to counties—County treasurers' commission on payment of tax to state treasurer. For the year one thousand eight hundred and ninety-two, and annually thereafter, three-fourths of the net amount of tax based on the return of property subject to taxation for state purposes required to be made to and accepted by the state board of county commissioners, annually, by county commissioners and the board of revision of taxes in cities co-extensive with counties, that is collected and paid into the state treasury by a county, or city co-extensive with a county, shall be returned by the state treasurer to such county or city co-extensive with a county for its own use in payment of expenses incurred by it in the assessment and collection of said tax: Provided, that in consideration of the return to counties, and cities co-extensive with counties, of the tax aforesaid, no claim shall be made upon or allowed by the Commonwealth for abatements, tax collectors' commissions, extraordinary expenses, uncollectible taxes or for keeping a record of judgments and mortgages.⁷⁹

The practice of returning a portion of the state tax on personal property to the counties originated in the following manner: When the entire tax was retained by the state, it was the practice to pay all the expenses of collection of every kind to the counties collecting it, to remit uncollectible taxes, and to pay the expense of keeping the daily record of deeds and judgments, mortgages, etc., required to be furnished by the recorder and prothonotary of each county to the commissioners thereof for use in making assessments. These charges aggregated a considerable sum, and the allowing of the proper credits, and the arriving at the proper amounts to be paid the counties, were matters of great labor and considerable vexation of spirit to the board of revenue commissioners who had charge thereof. It was, therefore, suggested by

⁷⁸Sec. 13, Act of June 1, 1889,
P. L. 420.

⁷⁹Sec. 3, Act of June 8, 1891,
P. L. 229, amending § 16 of Act
of June 1, 1889, P. L. 420.

Auditor General Norris that, instead of going through such drudgery every year, the board should recommend that, in lieu of all such credits and payments to counties, a fixed proportion of the tax should be returned to them annually, the counties to pay therefrom all expenses of every kind connected with the tax. The suggestion was adopted by the Legislature, and the Act of June 1, 1889, provided that one-third of the said tax should be so returned. In 1891, when there appeared to be great danger of the passage of the "Granger" Revenue Bill, then pending, it was agreed, as a sop to Cerberus, to increase the proportion to be returned to three-fourths, which was accordingly done. The one-third granted by the Act of 1889 was given in commutation of payments theretofore made, but the difference between one-third and three-fourths, given by the Act of 1891, was a donation. It will probably be impossible for the Commonwealth ever to discontinue this donation, and reassume its own, no matter how badly it may need revenue.

The entire amount of tax collected by a county, less the amount of the county treasurer's commission, must be paid into the state treasury. The portion of the tax which the county is entitled to have refunded to it is then paid back by the state treasurer.⁸⁰

In counties having over 150,000 inhabitants, the county treasurer is not entitled to a commission on the personal property tax.⁸¹

In counties in which the treasurer receives a salary in lieu of fees, the county is entitled to the commission of one per centum on the gross sum collected, which the treasurer would have received if paid by fees. From such counties, the Commonwealth is not entitled to receive the gross sum of tax on personal property collected by the treasurer, but is entitled to only that sum less the commission of one per centum.⁸²

The treasurer of a county who is paid an annual salary, is not entitled to commissions for paying over to the Commonwealth

⁸⁰Com. v. Phila. County, 157 Pa. 531 (1893); State Tax Collected by County Treasurers, 9 D. R. 263 (1900).

⁸¹Phila. v. McMichael, 208 Pa. 297 (1904), distinguishing Phila. v. Martin, 125 Pa. 583 (1889); Com. v. Moore, 208 Pa. 327

(1904); Kirkendall v. Luzerne County, 25 Pa. Super. Ct. 429 (1904).

⁸²Com. v. Allegheny County, 10 Dauph. Co. Rep. 3 (1907); Com. v. Lancaster County, 10 Dauph. Co. Rep. 30 (1907).

the state tax on personal property collected by his predecessor.⁸³

§ 938. Auditor general to furnish blank returns, etc., to county commissioners. The auditor general shall furnish to the county commissioners or boards of revision in counties or cities co-extensive with counties, all necessary books, blanks, notices and papers to carry this act into effect.⁸⁴

§ 939. Collection of tax by counties—Payment to state treasurer—Penalty for delay in payment—Commissions to county and city treasurers. The taxes imposed upon personal property by the first section of this act, shall be collected by the several counties and cities, and on the first Monday of September shall pay unto the state treasury all such sum or sums of money as may then have been collected, and shall on the second Monday of November immediately following in each year complete and pay unto the said state treasurer the whole amount remaining unpaid; and in default thereof, it shall be the duty of the auditor general to add ten per centum penalty to each county or city on all taxes remaining unpaid on the second Monday of November of each year, which shall be charged in the duplicate against each delinquent taxpayer in arrears on and after said day: Provided, that city or county treasurers shall be permitted to retain for their own use from the gross sum of money paid by them into the state treasury the commissions named and prescribed by existing laws.⁸⁵

§ 940. Collection and payment of the tax in Philadelphia. The receiver of taxes of the city of Philadelphia shall collect and thereafter daily pay into the city treasury all state taxes by him collected. The city of Philadelphia shall pay over all state taxes collected and paid into the city treasury before the twenty-fifth day of July in each year, and receive therefor the five per cent. allowed by law, and one per cent. for the commission of collection, but no allowance for the then uncollected state tax, unless the city shall advance the same by the said date, in which case the city may borrow the amount of such residue of the current year's state tax: Provided, that the loans therefor be all payable within the year, and the whole of the state taxes for the year for

⁸³Centre County v. Gramley, 155 Pa. 325 (1893).

⁸⁴Sec. 17, Act of June 1, 1889, P. L. 420. See §§ 758a, 758b.

⁸⁵Sec. 15, Act of June 1, 1889, P. L. 420.

which they accrued, shall be paid into the state treasury by the twenty-fifth of January next thereafter. The city shall allow to the taxpayers for the state tax five per cent. on all sums paid before the twenty-fifth of July of the year when due, and nothing if paid thereafter.⁸⁶

§ 941. **Counties liable for the payment of the tax.** In assessing, collecting and remitting the state tax to the state treasurer, the county treasurer is not the agent of the Commonwealth but of the county, until the tax is paid by him into the state treasury.⁸⁷

Where a county treasurer applies the payment of a certain portion of the tax received by him on another account with the Commonwealth for which the county is in no way responsible, a claim that such an appropriation is an embezzlement by the treasurer as a trustee of the county funds and that the county holds the money on the same trust, cannot be sustained. Such a claim raises a distinct cause of action which the county, as a subject, cannot sustain against the Commonwealth as the sovereign.⁸⁸

Where through neglect of the Commonwealth's officers, the county treasurer fails to make a prompt return of the tax, and subsequently embezzles the fund, the county is not liable for interest on the portion of the fund which it is entitled to receive back from the state.⁸⁹

Where a county treasurer embezzles the tax paid to him and a settlement is made by the Commonwealth against the county for the amount of the tax, but without the county officers knowing of the settlement until several months thereafter, and without their having an opportunity to investigate the matter, the attorney general's commission should not be charged against the county in an action of assumpsit to recover the amount of the settlement.⁹⁰

The sureties on the bond of a county treasurer given to the state under the Act of April 15, 1834, P. L. 542, are liable for his default in not paying to the state treasurer the personal

⁸⁶Sec. 9, Act of May 13, 1856, P. L. 569. See §§ 758a, 758b, 942a.

⁸⁷Com. v. Phila. County, 157 Pa. 531 (1893); Com. v. Phila. City and County, 157 Pa. 550 (1893); Schuylkill County v. Com., 36 Pa. 524 (1860); Com.

v. Martin, 125 Pa. 583 (1889), distinguished.

⁸⁸Com. v. Phila. County, 157 Pa. 531 (1893).

⁸⁹Com. v. Phila. County, 157 Pa. 531 (1893).

⁹⁰Com. v. Phila. County, 157 Pa. 531 (1893).

property tax under the Act of June 8, 1891, P. L. 229, and if the county pay the state the amount of the treasurer's default, it may recover from his sureties on the state bond, but the amount of recovery is limited to the difference between the whole tax charged and paid to the state and the amount of the tax which the state was required to immediately return to the county.⁹¹

The surety on the state bond of a county treasurer is liable for taxes on real and personal property received by him for the use of the Commonwealth and not paid over, and though the county is the debtor of the state for interest accrued and accruing on, and for the principal of such taxes, the surety cannot require the state to look to the county, and it to the surety on the county bond.⁹²

§ 942. Contracts for the payment of the tax by borrowers of money illegal. From and after the passage of this act it shall be unlawful for any person or persons, copartnership, unincorporated association, limited partnership, joint stock association or corporation whatsoever, in loaning money at interest to any person or persons, whether such loans be secured by bond and mortgage, or otherwise, to require the person or persons borrowing the same to pay the tax imposed thereon by the first section of this act; and in all cases where such tax shall have been paid by the borrower or borrowers, the same shall be deemed and considered usury, and be subject to the laws governing the same.⁹³

Contracts for the payment of tax by borrowers were expressly permitted by the Act of April 4, 1865, P. L. 61,⁹⁴ which was repealed by the Act of June 1, 1887, P. L. 292, and by the foregoing provisions such contracts are made unlawful.

The 18th section of the Act of June 1, 1889, *supra*, is not, however, retroactive, and applies only to contracts entered into after the passage of the act.⁹⁵

§ 942a. No abatement for prompt payment of tax. The Act of April 29, 1844, § 42, P. L. 501, offered to any county an abatement of five per cent. on state taxes paid into the state treasury before August 1, and made unpaid taxes a lien upon tax-

⁹¹Com. v. Hershey, 200 Pa. 306 (1901).

⁹²Hughes v. Com., 48 Pa. 66 (1864).

⁹³Sec. 18, Act of June 1, 1889, P. L. 420.

⁹⁴Fidelity Ins., Tr. & S. D. Co. v. Scranton, 102 Pa. 387 (1883).

⁹⁵Gourley v. Thompson, 27 Pa. C. C. 104 (1902); 11 D. R., 174; Williams v. Graver & Loecher, 152 Pa. 571 (1893).

ables' real estate, and subjected them to a penalty of six per cent. until paid. This applied to Philadelphia and all other counties. The Act of May 13, 1856, § 9, P. L. 569, which applied only to Philadelphia, granted an abatement to the taxpayer paying before July 25 in each year. Hence, in Philadelphia the abatement was given to the taxpayers; in other counties, to the county. The Act of April 30, 1864, § 7, P. L. 220, repealed the Act of April 29, 1844, and while it did not expressly repeal the Act of 1856, yet, as that act recognized only "abatements allowed by law," and such allowance was made only by the Act of 1844, the repeal of the latter act virtually repealed every provision in the Act of 1856 relative to abatements. Hence, the abatement was abolished by the Act of 1864 in Philadelphia as well as elsewhere.⁹⁶

Abatements were formerly allowed to certain counties for prompt collection of the tax under the provisions of special laws, but these have not been paid since the return to counties of a portion of the tax under the provisions of the Acts of June 1, 1889, P. L. 420, and June 8, 1901, P. L. 229, such return being in lieu of all charges or claims whatever.

§ 943. Establishment of board of revenue commissioners. For equalizing the assessments and taxes for the use of the Commonwealth, in the different cities and counties thereof, the auditor general, state treasurer and secretary of the Commonwealth shall constitute a board of revenue commissioners, to meet at Harrisburg, at such times as they or a majority of them shall agree upon, at least once in three years, and as much oftener as they may deem necessary.⁹⁷

The Board of Revenue Commissioners was originally constituted by the 36th section of the Act of April 29, 1844, P. L. 499, and its membership subsequently changed by Act of April 30, 1864, § 8, P. L. 221.

"Evidently the main purpose of the creation of the Revenue Board by the Act of April 29, 1844, was to equalize taxation for state purposes throughout the state by adjusting the valuations of real estate as returned by the county commissioners of the several counties. In some of these real estate was systematically assessed at only one-half or one-third of its real value, while in others the full value was given, and hence, without equalization by some body having power to include the whole state in its action, the greatest ine-

⁹⁶Ridgway v. O'Neill, 49 Pa. 174 (1865).

⁹⁷Sec. 1, Act of May 24, 1878, P. L. 126.

quality in the burden of taxation would prevail. . . . The tax on real estate for state purposes was abolished in 1866. Thenceforth, the main reason for the existence of the board of commissioners had disappeared; yet the law creating them continued unrepealed, and they continued to act, though for many years their action amounted to little more than the clerical work of tabulating the assessments made in the different counties and returned to them by the commissioners of the several counties. . . ."⁹⁸

Subsequently, as stated by the court in the opinion from which the above quotation is made, the board added fifteen thousand watches to the number returned by the assessors of Philadelphia, but it was held, on appeal from such action, that

"The Revenue Commissioners were authorized to equalize the valuation in the different counties by increasing or diminishing the same, but not by introducing new items never before assessed or returned. The revenue commissioners could not add new property never taxed."⁹⁹

The powers of the board remain practically the same, under the Act of May 24, 1878, P. L. 126, as under the Act of 1844, and, under said Act of 1878,

". . . The board of revenue commissioners have no power to act as assessors by adding to the returns made to them through the county commissioners and board of revision of taxes subjects of taxation not contained in such returns."¹⁰⁰

Consequently the board may not raise the valuation of a county by adding mortgages or other personal property not returned by the local assessors and board of revision of taxes.¹

It would seem, however, that, if the board were satisfied, after investigation, that there was a systematic under-assessment of the value of personal property in a given county, it may raise the valuation of such county to an amount equal to what the actual value of the property assessed is.

It was intimated in one case that the board may, when satisfied that property has been omitted from assessment by fraud or mis-

⁹⁸Com. v. Philadelphia, 14 W. N. C. 371 (1883).

⁹⁹Phila. v. Mackey, 2 Pearson 406 (1876); 34 Leg. Int. 160; Phila. v. Cochrane, 34 Leg. Int.

164 (1877); 4 W. N. C. 222; Com. v. Blair Co., 2 Pears. 415 (1878).

¹⁰⁰Com. v. Philadelphia, 14 W. N. C. 371 (1883).

¹Com. v. Philadelphia, 14 W. N. C. 371 (1883).

take of the assessors, possibly cause an assessment of the omitted articles to be made.²

Where certain taxable personal property was returned by its owners to the county commissioners for purposes of taxation, but the value of said property was omitted from the return made to the board by the county commissioners, in the belief that such property was not taxable, the board may raise the valuation of the county by an amount equal to the valuation of the untaxed property. In such a case "there can be no reason for insisting upon any other assessment, and authority cannot be found why it should have been made."³

The powers of the board are limited to the equalization of the valuation of property taxable for state purposes, and it has no authority, where a county has been divided into two counties, to apportion a credit allowed by the Commonwealth to the old county and transfer a part of it to the new county.⁴

§ 944. Boards of revision of taxes and county commissioners to furnish board with statements of assessments, and to answer inquiries addressed to them by board. The said board of revenue commissioners shall have power to require, and it shall be the duty of the commissioners for the revision of taxes of cities in which a state tax is or shall be collectible, and the county commissioners of the several counties, to furnish, at least ten days before the meetings of the board of revenue commissioners, to the state treasurer, for the use of the said board of revenue commissioners, a statement, under oath, of the return made by the assessors of the value in the aggregate of all the property liable to state tax, in the said cities and counties, respectively, distinguishing real from personal estate;⁵ which statements shall be submitted by the state treasurer to the board of revenue commissioners, whenever the same shall be duly organized; and it is hereby made the duty of the county commissioners, and of the city, county, borough and township assessors, upon being required so to do, to furnish answers under oath to such interrogatories or inquiries as may be addressed to them, or any of

²Phila. v. Mackey, 2 Pears. 406 (1876). See Com. v. Blair County, 2 Pears. 415 (1878).

³Com. v. McKean County, 200 Pa. 383 (1901).

⁴Lackawanna County v. Com., 156 Pa. 477 (1893); Com. v. Luzerne County, 1 Mona. 418.

⁵As elsewhere stated, real estate is no longer taxable for state purposes. See § 88.

them, by said board of revenue commissioners, or a majority of them; and any neglect or refusal to furnish such statements, or to give full and satisfactory answers as aforesaid, when in their power, shall be deemed and taken to be a misdemeanor in office on the part of the officers so neglecting or refusing, and shall be punished as like offences are now punishable by law, and such statements and answers when required may be compelled by mandamus.⁶

§ 945. Board to equalize valuations of property taxable for state purposes. The board of revenue commissioners of the Commonwealth of Pennsylvania, when duly organized, shall proceed to ascertain and determine the fair and just value of the property of the said cities and counties of this Commonwealth made taxable by law, adjusting and equalizing the same as far as possible, so as to make all taxes bear as equally as practicable upon all the property of the Commonwealth made or hereafter to be made taxable for state purposes, in proportion to its actual value; and for the purpose of adjusting and equalizing the same among the several cities and counties, the said board shall have power to ascertain, from the statements of said city and county commissioners furnished according to law, and the answers of such county and city commissioners and other city, county, township and borough officers, to interrogatories, and from the statistics collected by the secretary of internal affairs, and by such other evidence as in their judgment will lead to a fair and equal adjustment of the taxable property, and an allotment of an equitable quota of the state tax to each city and county, according to the amount and value of its taxable property, as far as practicable, and to ascertain the value of such items and articles of taxation as are liable to a specific tax, and the quality and value of the several classes of property liable to an ad valorem tax, and when so ascertained to make a statement of the same, assigning to each city and county the quantity and value of taxable property therein, and the quota of tax to be raised therefrom. . . .⁷

§ 946. Board to file record of statement of adjusted valuations as fixed by it. The said board of revenue commis-

⁶Sec. 2, Act of May 24, 1878, P. L. 126. The remainder of this section repealed by § 6, Act of

⁷Sec. 3, Act of May 24, 1878, June 10, 1881, P. L. 101.

sioners having ascertained and determined the same in the manner aforesaid, shall make a fair record of the said valuation and adjustment in duplicate, and file one copy thereof, duly attested by the said revenue commissioners, in the office of the state treasurer, and one copy thereof in the office of the auditor general, to be and remain as the destination and valuation of said property and to show the amount with which each city and county is chargeable, until the next meeting of the board.⁸

§ 947. State treasurer to transmit copies of adjusted valuations to county commissioners, and issue his precept for the collection of the tax. On the receipt and filing of said record, it shall be the duty of the state treasurer forthwith to transmit to the commissioners and boards of revision of taxes of each city or county, a copy of the valuation of the property of said city or county, showing as aforesaid the amount of state tax necessary to be raised therein on the property so liable to taxation, and to issue his precept, requiring said city and county commissioners and boards of revision of taxes to assess and collect the state tax in their respective cities and counties, as provided by law, on the amount of the valuation and property so ascertained to be liable to taxation for state purposes and so transmitted; and whenever the said revenue commissioners shall find it necessary to increase the aggregate value of the assessable property in any county, in order to equalize taxation, it shall be the duty of the state treasurer forthwith to transmit to the county commissioners of said county the amount of such increased valuation, and the quota or amount of tax due the state on account of said increased valuation; and the said city or county shall be required to pay into the state treasury the sum so fixed by the board of revenue commissioners as the quota or amount of tax due from said city or county.⁹

§ 948. Appeal to board from adjusted valuations. Any city or county not satisfied with the adjustment of taxation, which shall notify the state treasurer, specifying the objections to said adjustments, within thirty days after receiving the record from the state treasurer, shall have the right of appeal and a hearing before said board of revenue commissioners, which board shall proceed to re-hear and re-adjust the said valuation as equity and

⁸Sec. 4, Act of May 24, 1878,
P. L. 126.

⁹Sec. 5, Act of May 24, 1878,
P. L. 126.

justice may require according to the facts, on thirty (30) days' notice to said city or county, and if found erroneous, shall correct the same.¹⁰

§ 949. Appeal to court of common pleas of Dauphin county from final action of the board. Any county of this Commonwealth that may consider itself aggrieved by the final action of the board of revenue commissioners, in increasing the valuation of personal property liable to state tax of such county and the quota of tax due from such city or county, may thereafter present a petition to the court of common pleas of Dauphin County, or a law judge thereof in vacation, if said court shall not be in session, setting forth the return made by such county and the increase made therein by the board of revenue commissioners, which petition shall also set forth wherein it is claimed that the action of the board of revenue commissioners, in making such increase, was illegal, or was not justified by the evidence, before the board; the said court or law judge shall thereupon fix a day for hearing the said petition, and a copy thereof and of the order of court or law judge in vacation fixing a time for hearing, shall be served upon the auditor general and state treasurer at least thirty days before the time fixed for said hearing.¹¹

An appeal may be taken to the court of common pleas of Dauphin county only after an appeal has been taken to the board. The appeal is allowed from the final action of the board, not from its original action.¹²

Except in cases where the board has no power to act in the premises,¹³ its action, when unappealed from, is final.¹⁴

§ 950. Procedure on appeal to court of common pleas of Dauphin county. The said court of common pleas of Dauphin county is hereby authorized to hear and determine the claims presented by such counties, and therein to make such orders and rules from time to time, and to issue such process and enforce obedience thereto, as may be necessary to inquire into the facts set forth in such petition, and shall ascertain whether the said

¹⁰Sec. 6, Act of May 24, 1878, P. L. 126.

¹¹Sec. 7, Act of May 24, 1878, P. L. 126.

¹²Northumberland County v. Com., 37 L. I. 407 (1880); 12 Lanc. Bar. 122.

¹³Lackawanna County v. Com., 156 Pa. 477 (1893).

¹⁴Com. v. Phila. County, 10 Atl. Rep. 772 (1887); Com. v. Butler County, 2 Pears. 421 (1879).

board of revenue commissioners exceed their powers or failed to do equity in the premises, or acted without sufficient evidence in the premises; and in the prosecution of said inquiry, said court may require the attendance of any person or persons, including the members of the board of revenue commissioners, and examine them upon oath in the premises, and may also compel the production of books and papers or other evidence deemed necessary.¹⁵

§ 951. Court to ascertain amount of any errors and certify same to auditor general and state treasurer, who shall give proper credits. If said court shall find that said board of revenue commissioners illegally, inequitably or without proper and sufficient information, increased any such county returns, it shall ascertain the amount of said error, and shall thereupon certify the amount thereof to the auditor general and state treasurer, who shall thereupon make a credit in the accounts of said county for the said amount, to be applied upon any then existing or future indebtedness of said county to the Commonwealth for tax upon personal property.¹⁶

§ 952. Appeal to court not to suspend collection of tax. No appeal to the said court of common pleas of Dauphin county shall suspend or postpone the collection of the amount of taxes due from such county appealing as fixed by the action of the board of revenue commissioners.¹⁷

§ 953. Board to keep a journal and report to Legislature. It shall be the duty of the revenue commissioners to keep a journal of their proceedings, and to make report after each triennial meeting to the Legislature of the state.¹⁸

§ 954. Collection and payment of tax when aggregate valuation is reduced. Whenever the board of revenue commissioners shall, for the purpose of equalizing taxation in said cities and counties of this Commonwealth, reduce the aggregate valuation of property in such city or county, [such city or county] may proceed to collect the state tax as fixed by law upon the aforesaid aggregate valuation; and there shall be paid into the state treasury for state purposes the quota of such reduced valu-

¹⁵Sec. 8, Act of May 24, 1878,
P. L. 126.

¹⁶Sec. 9, Act of May 24, 1878,
P. L. 126.

¹⁷Sec. 10, Act of May 24, 1878,
P. L. 126.

¹⁸Sec. 11, Act of May 24, 1878,
P. L. 126.

ation, and the tax levied by reason of the excess valuation merely, shall be received by such city or county, as city or county tax, for city or county purposes, as the case may be.¹⁹

§ 955. **Compensation of members of board.** The members of the said board of revenue commissioners shall each receive the sum of three hundred dollars, as compensation for their services for each triennial meeting of said board, to be paid by the state treasurer on the warrant of the auditor general.²⁰

¹⁹Sec. 12, Act of May 24, 1878, affirming 3 Pa. C. C. 97; Com v. P. L. 126. See Com. v. Phila. Herr, 1 Pears. 332.

County, 10 Atl. Rep. 72 (1887), ²⁰Sec. 13, Act of May 24, 1878, P. L. 126.

CHAPTER XLVIII.

COLLATERAL INHERITANCE TAX.

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- 1011. Refund of tax where heirs are discovered.
- 1012. Refund of direct inheritance tax.

§ 956. **History.** Pennsylvania was the first of the American Commonwealths to lay a tax on collateral inheritances, which it did by the Act of April 27, 1826, P. L. 227. Its example has since been followed by numerous other states. An enumeration of the various acts relating to this tax, with a statement of the

various early provisions incorporated in the several sections of the Act of May 6, 1887, P. L. 79, respectively, will be found in Del Busto's Estate, 23 W. N. C. 111.

The tax is now imposed under the provisions of the Act of May 6, 1887, P. L. 79, and its supplements, which act is chiefly a compilation and re-enactment of former laws on the subject, and does not subject to the tax other or different estates from those subject thereto under the provisions of previous acts.¹

§ 957. Nature of the tax.

"It is, therefore, not a tax on the property or money bequeathed, but a diminution of the amount that otherwise would pass under the will or other conveyance, and hence that which the legatee really receives is not taxed at all."

"This is not to be viewed as a tax assessed upon the estate of the decedent or of any one, but a restriction upon the right of acquisition by those, who, under the law regulating the transmission of property, are entitled to take as beneficiaries without consideration. The state is made one of the beneficiaries. It lays its hands upon estates under such circumstances and claims a share, and whether the same is exacted as a tax or duty or whatever else . . . it is of no consequence."

"The tax does not attach to the very articles of property of which the deceased died possessed. . . . It is on the net succession to the beneficiaries, and not on the securities on which the estate of the decedent was invested."

From the foregoing it would seem that the tax is a succession tax, but, in cases relating thereto, it is not infrequently considered as a tax on property, and various classes of property are said to be subject to or exempt from the tax, which practice is followed in this chapter.

The Direct Inheritance Tax Act of May 12, 1897, P. L. 56, held to be unconstitutional, was held to impose a tax on property, but that act specifically provided that "all personal prop-

¹Cooper v. Com., 5 Pa. C. C. 271 (1888); 127 Pa. 435 (1889). This case contains a review of all statutes relating to this tax, to which the reader is referred. Howell's Estate, 10 Pa. C. C. 232 (1891).

²Finnen's Estate, 196 Pa. 72 (1900). See, however, Bittinger's Estate, 129 Pa. 338 (1889), in

which the tax is specifically held to be a tax on property.

³Strode v. Com., 52 Pa. 181 (1866).

⁴Orcutt's Appeal, 97 Pa. 179 (1881); Com. v. Herman, 16 W. N. C. 210 (1885). See Lick's Estate, 12 D. R. 573 (1903), op. Atty. Gen.

erty of whatsoever kind and nature which shall pass by will or by the intestate law of this state . . . shall be . . . subject to a tax . . .", whereas the tax imposed by the Act of 1887 is on "estates."⁵

The tax on collateral inheritances is not a tax within the meaning of the constitutional provision exempting from taxation institutions of purely public charity, etc.⁶

The exemption from the tax of estates of less than two hundred and fifty dollars in the Act of May 6, 1887, P. L. 79, and its supplements, would have been void for want of uniformity in the operation of the tax, under the provisions of § 1, Art. IX, of the constitution, but for the fact that said act merely re-enacted a provision which existed in the Act of 1826, and consequently long prior to the adoption of the Constitution of 1874 containing said requirement as to the uniformity of taxes.⁷

§ 958. Estates subject to payment of tax. All estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seized thereof be domiciled within or out of this state, and all such estates situated in another state, territory or country, when the person or persons dying seized thereof shall have their domicile within this Commonwealth, passing from any person who may die seized or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children, and lineal descendants born in lawful wedlock, children of a former husband or wife, or the wife or widow of the son of the person dying seized or possessed thereof, shall be, and they are hereby made, subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount,

⁵Cope's Estate, 191 Pa. 1 (1899).

⁷Cope's Estate, 191 Pa. 1 (1899), per Sterrett, C. J.

⁶Finnen's Estate, 196 Pa. 72 (1900).

to be paid to the use of the Commonwealth; and all owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over, for the use aforesaid, as hereinafter directed: Provided, that no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax.⁸

The liability to the tax is to be determined, not by the amount of any particular legacy or devise, but by the clear value of the estate passing to persons and bodies not exempt from the payment of the tax.⁹ If the aggregate amount passing to persons and bodies not exempt from the tax is two hundred and fifty dollars, then each legacy or devise to such a person or body is taxable, no matter what the amount of the same may be.¹⁰

Only estates of less than two hundred and fifty dollars are exempted from payment of the tax. Hence, if the amount passing to persons and bodies not entitled to exemption is precisely two hundred and fifty dollars, the tax is payable.¹¹

§ 959. "Clear value" of estates taxable. The tax is imposed upon the clear value of the estates passing to collaterals. In calculating such clear value, debts justly due, although barred by the statute of limitations, are to be deducted from the gross assets of the estate.¹²

Where exceptions were filed to an appraisement for the payment of tax, specifying error in not deducting certain items of expense from the appraised value, held, that, the parties in interest having assented to the amount to be allowed for charges, the register had no discretion in the premises unless there was ground for a suspicion of fraud.¹³

The tax is imposed on what remains for distribution after the

⁸Act of April 22, 1905, P. L. 258, amending § 1, Act of May 6, 1887, P. L. 79.

⁹Howell's Estate, 147 Pa. 164 (1892).

¹⁰Com. v. Kerchner, 24 W. N. C. 260 (1889); Mixer's Estate, 10 Pa. C. C. 409 (1901). In Com. v. Boyle, 2 Del. 335 (1885), it is held that the tax accrues if the

clear value of the entire estate is two hundred and fifty dollars, regardless of the amount passing to collaterals.

¹¹Kirkpach's Estate, 13 D. R. 441 (1904).

¹²McKee's Estate, 10 D. R. 538 (1901).

¹³Cullen's Estate, 142 Pa. 18 (1891).

expenses of administration, debts and rightful claims of third parties are deducted. This does not include the expense of counsel in litigation among persons claiming as distributees of the decedent's estate.¹⁴

§ 960. Exemption from tax of property passing to certain beneficiaries. Property passing to father, mother, husband, wife, children and lineal descendants born in lawful wedlock,¹⁵ children of a former husband or wife,¹⁶ or the wife or widow of the son of the person dying seized or possessed thereof, is not subject to the tax.

Property passing to a grandmother, under the operation of the intestate laws, is taxable,¹⁷ and so is a legacy to the widow of the son of the testator, remarried in testator's lifetime, her second husband being alive at the time of testator's death.¹⁸ Property passing to the husband of the daughter of the testator, taking as heir of his wife, is taxable,¹⁹ but a bequest to a son-in-law is not taxable, where it appears that it is intended for the use and maintenance of testator's grandchildren.²⁰

The terms "father" and "mother" in the act can be applied only to the father, and mother by nature, and hence an estate passing from an adopted child to the adopting parents is taxable.²¹

In order to be exempt from taxation legacies or devises, to the exempted classes of beneficiaries must be for the sole use and benefit of such beneficiaries, and estates given them on condition that they pay annuities to persons not belonging to the exempted classes are taxable.²²

B. made a deed of trust conveying certain property to a trustee for B.'s life, to be conveyed at his decease to his mother in fee. His mother died in 1879, leaving a will by which she left one-half of her estate to her daughter M., absolutely, in fee, and

¹⁴Lines' Estate, 155 Pa. 378 (1893).

¹⁵See §§ 961, 962, as to illegitimate children.

¹⁶Estates passing to such children were exempted by the supplement of April 22, 1905, P. L. 258.

¹⁷McDowell v. Addams, 45 Pa. 430 (1863).

¹⁸Com. v. Powell, 51 Pa. 438 (1866).

¹⁹Com. v. Schumacher, 9 Lanc. Bar 195 (1878).

²⁰Morris's Estate, 1 D. R. 818 (1892).

²¹Com. v. Powel, 16 W. N. C. 297 (1885).

²²Lea's Estate, 194 Pa. 524 (1900); Nieman's Estate, 131 Pa. 346 (1890); Brewer's Estate, 32 Pitts. L. J. 432 (1884); 33 Pitts. L. J. 114 (1885).

the other half in trust for B. during his lifetime, and, at his decease, if he should die without lawful issue, to the said M. B. died in 1882, intestate and without lawful issue. Held, that M. took the trust estate as the heir of her mother, and not as heir of B., and that the same was not, therefore, subject to the payment of tax.²³

Testator bequeathed an estate to his daughter for life, and, after her death, to such persons as she should by will appoint. The daughter died, having devised the property to her brothers and sisters. Held, that they took the property lineally, as the heirs of their father, and not collaterally as heirs of their sister.²⁴

Legatees in whose favor a power of appointment is exercised take under the will of the original testator, of whose estate the legacies given them through the agency of the donee are a part. Whether devises by the donee are liable to the payment of tax depends upon the relationship of the devisees to the original donor and not to the donee.²⁵

Where a mother and two children perished in a shipwreck, two other children surviving, there being no evidence to show who perished first, it was held that the surviving children inherited from the mother, and not as heirs of the deceased children, and that no tax was due upon the property inherited by them.²⁶

§ 961. Legacies and devises to adopted and legitimated children. Legacies and devises to adopted children are subject to the tax, notwithstanding the provision of the Act of May 4, 1855, P. L. 430, giving to such children the right to inherit,²⁷ and notwithstanding the provision of a special act providing that they shall inherit as effectually as if they were their adopters' own children.²⁸

²³Com. v. Hackett, 102 Pa. 505 (1883).

²⁴Com. v. Williams' Executors, 13 Pa. 29 (1850). See Adams' Estate, 44 Pitts. L. J. 331 (1897).

²⁵Parke's Estate, 13 D. R. 196 (1904); Com. v. Sharpless, 2 Chest. Co. 246 (1884); Johnson's Estate, 2 Leg. Gaz. 20 (1869).

²⁶Clymer's Estate, 16 W. N. C. 36 (1885).

²⁷Com v. Nancrede, 32 Pa. 389 (1859); Schafer v. Eneu, 54 Pa. 304 (1867); Packard's Appeal, 37 L. I. 135 (1880); Galbraith v. Com., 14 Pa. 258 (1856); Physick's Estate, 2 Brewst. 179 (1862).

²⁸Tharp v. Com., 58 Pa. 500 (1868).

But where a special act authorizes the adoption of A by B and provides that whatever estate A shall take from B shall be subject to such tax only as would be payable if A were the son of B, it was held that no tax was payable on the property devised to A by B.²⁹

Where, however, children born prior to marriage have been legitimated by the subsequent marriage of their parents, under the provisions of the Act of May 14, 1857, P. L. 507, they are not liable to pay tax upon estates passing to them from their parents.³⁰

This is because the said act provides that if a father and mother of illegitimate children marry, the children shall be legitimated and shall enjoy all the rights and privileges as if they had been born during the wedlock of their parents; but a mere act of adoption of a natural son, making him heir, will not exempt the estate passing from the father to such son from tax.³¹ And a devise to an illegitimate daughter, adopted in 1853 under the provisions of a special act, investing her with all the rights of a legitimate daughter and legal heir, is subject to the tax.³²

Where an act authorized A to adopt B as his heir and provided that B is hereby made the heir at law of A, to be able to inherit his estate and property "as fully to all intents and purposes, as if he had been born in lawful wedlock," it was held that said act was one of adoption and not of legitimation, and that a devise to B from A was subject to the tax.³³

§ 962. Legitimation of illegitimate children and their heirs as to their mothers and their mothers' heirs. Illegitimate children shall take and be known by the name of their mother, and the common-law doctrine of nullius filius shall not apply as between the mother and her illegitimate child or children. But the mother and her heirs and her illegitimate child and its

²⁹Com. v. Henderson, 172 Pa. 135 (1895); Com. v. Stump, 53 Pa. 132 (1866).

³⁰Com. v. Gilkeson, 18 Pa. Super. Ct. 516 (1901). See this case for an examination of the liability of adopted and legitimated children to the tax. Com. v. Stump, 53 Pa. 132 (1866);

Killam v. Killam, 39 Pa. 120, contra.

³¹Province's Estate, 4 D. R. 591 (1895).

³²Wayne's Estate, 2 Pa. C. C. 93 (1886).

³³Com. v. Ferguson, 137 Pa. 595 (1890). See reference to this case in Com. v. Gilkeson, 18 Pa. Super. Ct. 516 (1901).

heirs shall be mutually liable one to the other, and shall enjoy all the rights and privileges one to the other, in the same manner and to the same extent as if the said child or children had been born in lawful wedlock.³⁴

The intent of this act is to legitimate an illegitimate child and its heirs, as to its mother and her heirs; but it is not intended to change the existing law with regard to the father of such child, or their respective heirs and legal representatives. This act shall apply to all cases now pending where the estate of such illegitimate or its mother has not been actually paid to and received by collateral heirs or relatives or the Commonwealth, as well as to all such cases happening after the passage of this act.³⁵

Under the foregoing act, an illegitimate child takes under his maternal grandmother's will, free from tax,³⁶ and an illegitimate child inheriting property from its mother is not liable to pay the tax thereon.³⁷

The title of said Act of 1901 gives sufficient notice of exemption from tax of estates passing from mothers to their bastard children.³⁸

§ 963. Estates consisting of United States bonds and other exempted obligations are taxable.

"If an estate consist wholly of Federal bonds and is indebted, conversion of them into money is necessary to pay the debts; and nobody would doubt that the sum that remained after payment of debts would be subject to a deduction of 5 per cent. for the use of the state. But suppose the Federal bonds be used to pay the only indebtedness that exists, and a residue of estate remains for distributees, is it not to pay the collateral inheritance tax? Clearly it must, though it may be less than the aggregate of the bonds. The act operates on the residue of the estate after paying debts and charges, and, theoretically, that residue is always a balance in money. The administration account always exhibits a balance in cash, not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show, and always does show, a cash balance. That is the fund taxed by this law, and not the bonds or other chattels which may have produced the fund. . . ."

³⁴Act of June 10, 1901, P. L. 639, § 1.

³⁵Sec. 4, Act of June 10, 1901, P. L. 639, as amended by Act of March 28, 1903, P. L. 70.

³⁶Tegetoff's Estate, 17 D. R. 798 (1908).

³⁷Com. v. Mackey, 222 Pa. 613 (1909).

³⁸Com. v. Mackey, 222 Pa. 613 (1909).

³⁹Strode v. Com., 52 Pa. 181 (1866).

An estate passing to collaterals is taxable though it consist in part of state bonds, exempt from taxation, and although the bonds themselves are transferred to the collaterals.⁴⁰

§ 963a. Real estate in Pennsylvania taxable. Inasmuch as the first section of the Act of April 22, 1905, *supra*, § 958, makes all estates of every kind "situated within this state" taxable, it follows that all estates consisting of real estate in Pennsylvania are taxable when passing to non-exempted persons, and this whether such property is owned by a resident or a non-resident.⁴¹

But where a non-resident testator directs his executors to sell and convert into cash his real estate situated in Pennsylvania, there is a conversion of the real estate into personalty, the situs of which was at the domicile of the testator, and the proceeds of such sale are not subject to the tax.⁴²

§ 964. Estates consisting of real property located in other states not taxable. Estates consisting of real estate located in other states are not taxable, although the devisors thereof are domiciled in Pennsylvania.⁴³

Where, however, testators direct such real estate to be sold, a conversion thereof into personalty takes place, and the proceeds are taxable, as will appear in the following section.

§ 965. Tax on proceeds of sales of real estate of residents located in other states. Where real estate or securities of residents, situated out of the state, are directed by will to be sold or converted into money to pay the pecuniary legacies, the legacies pass to the legatees subject to the collateral inheritance tax.⁴⁴

Where a testator by his will directed his executors to sell all or any part of his real estate whenever such sale might be neces-

⁴⁰Com. v. Herman, 16 W. N. C. 210 (1885).

⁴¹Thayer v. Com., 12 W. N. C. 553 (1883).

⁴²Shoenberger's Estate, 221 Pa. 112 (1908); Coleman's Estate, 159 Pa. 231 (1893). See § 967.

⁴³Bittinger's Estate, 129 Pa. 338 (1889). This decision is based on the proposition that the tax is a tax on property, which seems to

have been abandoned in the later decisions. See § 957. Com. v. Coleman's Administrator, 52 Pa. 468 (1866).

⁴⁴Miller's Estate, Dorris' Appeal, 182 Pa. 157 (1897); 40 W. N. C. 505; Miller v. Com., 111 Pa. 321 (1886); Williamson's Estate, 153 Pa. 508 (1893); Dalrymple's Estate, 215 Pa. 367 (1906).

sary or expedient for any purpose of his estate of administration, distribution or otherwise, and, in the administration of the estate, it became necessary to sell real estate located in other states to pay the pecuniary legatees, held, that an equitable conversion of the real estate was effected, and that the proceeds of such sales were subject to the payment of the tax.⁴⁵

But where a will directs land situated outside of the state to be converted into personalty in the future or at the discretion of the executors, and the proceeds to be given to the collateral relatives of or strangers to the testator, the land until actual conversion retains its real character, and is not subject to the collateral inheritance tax.⁴⁶

And where a resident of Pennsylvania dies seized of lands situated in another state, which he directs by his will shall remain unsold during the lifetime of his widow, but shall be sold after her decease and the proceeds invested in mortgages and real estate in another state, the lands are not converted into personalty following the domicile of the decedent, and the proceeds thereof are not subject to the collateral inheritance tax.⁴⁷

So, also, where a testator authorizes his executors to sell lands in other states in their discretion upon such terms as may be expedient, but does not positively direct their sale, the proceeds of such lands, when sold, are not taxable.⁴⁸

§ 966. Tax on personal property of non-residents.⁴⁹ Ordinarily the choses in action of non-residents are not subject to the collateral inheritance tax;⁵⁰ but where a person domiciled in another state dies leaving stocks, bonds and mortgages, which had always been held by an agent in this state for investment

⁴⁵*Vanuxem's Estate*, 212 Pa. 315 (1905).

⁴⁶*Handley's Estate*, 181 Pa. 339 (1897); 40 W. N. C. 305; *Dalrymple's Estate*, 215 Pa. 367 (1906).

⁴⁷*Hale's Estate*, 14 Pa. C. C. 220 (1894); 3 D. R. 84.

⁴⁸*Drayton's Appeal*, 61 Pa. 172 (1869); *Com. v. Gordon*, 3 Sadler's S. C. Cases 501 (1886).

⁴⁹See § 980.

⁵⁰*Com. v. Duffield*, 12 Pa. 277 (1849); *Davison's Estate*, 51

Pitts. L. J. 402 (1904); *Bacon's Estate*, 3 Del. Co. 603 (1889); *Miller's Estate*, 48 Pitts. L. J. 355 (1901); *Commonwealth's Appeal*, 11 W. N. C. 492 (1882); *Hood's Estate*, 21 Pa. 106 (1853); *Orcutt's Appeal*, 97 Pa. 179 (1881); *Del Busto's Estate*, 23 W. N. C. 111 (1888); 6 Pa. C. C. 289; *Small's Estate*, 151 Pa. 1 (1892); *Allen et al. v. Phila. Sav. Fund Soc.*, 14 Phila. 408 (1879); *Kintzing v. Hutchinson*, 34 Leg. Int. 365.

and reinvestment, and the executors, legatees and creditors agree that there shall be a complete administration and distribution of the whole estate by the orphans' court of the county in which the securities were held and where the agent resides, the Commonwealth is entitled to the collateral inheritance tax on the estate.⁵¹

And where one domiciled in another state gives, by revocable deed of trust, stocks and stock trust certificates to a trust company in Pennsylvania to pay the income therefrom to herself for life, and after her death the principal to persons named, not lineal descendants, and the trustee is given the power to sell the same and reinvest the proceeds in good securities, tax is due on the trust after her death, where it appears that the securities were held in Pennsylvania by the trust company, that no ancillary letters were granted in Pennsylvania, that the fund was not claimed by decedent's administrators for the payment of debts, and that the proceeds of the securities were paid over to the persons named in the deed of trust, less the amount of the tax.⁵²

Where letters of administration were taken out in a forum in Pennsylvania, where the assets were found, the decedent being domiciled in another state, the next of kin and sole heir residing in said forum, the assets consisting of a fund inherited by decedent shortly before his death, and after his death paid to his administrator in Pennsylvania by the administrator of a deceased sister who had been domiciled in Pennsylvania, held, that the fund had its situs in Pennsylvania and not at the domicile of the decedent, and was therefore taxable in said state.⁵³

⁵¹Lewis' Estate, 203 Pa. 211 (1902). Otherwise, apparently, when the decedent was never seized of the property, which was transmitted to Pennsylvania long after her death. Matthiessen's Estate, 17 D. R. 201 (1907).

⁵²Singer v. Guarantee Trust & S. D. Co., 24 Pa. Super. Ct. 270 (1904).

⁵³Weaver's Estate, 4 D. R. 260 (1895). In the earlier case of Kintzing v. Hutchinson, 7 W. N. C. 226 (1877), however, it was held that choses in action of corporations and individuals in

Pennsylvania belonging to a decedent domiciled at his death in New Jersey, and passing to a collateral heir, not under the interstate laws of Pennsylvania, nor under any administration granted thereon, but under the laws of New Jersey, were not subject to tax under the Acts of April 7, 1826, and March 11, 1850, superseded by the Act of 1887. See also Allen v. Phila. Savings Fund, 7 W. N. C. 231 (1879); Com. v. Brenner, 18 Pitts. L. J. 147 (1870).

The interest of a non-resident deceased member of a limited partnership association is liable to the tax, where the real and personal property of the association is located within the state.⁵⁴

Where the resident of another state dies intestate, leaving personal property all in such state, and, two weeks after his death his sister, domiciled in Pennsylvania and entitled to a share in his estate, also dies, before receiving any of such estate, her share is liable to taxation in Pennsylvania. Immediately on the death of her brother she was not only constructively in possession of her share, but to a degree actually in possession, inasmuch as she could exercise every right of an owner in possession, except that of determining the amount of charges for administration. She was the absolute, uncontrolled owner, subject to a trifling lien.⁵⁵

§ 967. Proceeds of sales of real estate in Pennsylvania belonging to non-resident decedents not taxable. Where a testator without lineal relatives and domiciled in another state, directs that lands situated in Pennsylvania shall be sold, and that his executors shall convert the same into money, and apply the proceeds arising therefrom to the payment of legacies to collaterals, the proceeds of the sale of such lands are not subject to the tax.⁵⁶

Where a testator domiciled in another state appointed an executor as to his estate within the state of his domicile, and also appointed executors in Pennsylvania as to all his other estate, directing a sale of the real estate wherever situated, except lands specifically devised, and also directing the executors of his domicile, after paying legacies, to pay over any balance to the Pennsylvania executors, and it appears that the Pennsylvania executors improperly, but without objection on the part of the residuary legatees, paid to the state of Pennsylvania tax on the real estate situated within that Commonwealth, and after several accounts had been filed and distribution made without deduction for tax there remained only one legacy to be paid and the residuary estate to be distributed, five per cent. may

⁵⁴Small's Estate, 151 Pa. 1 (1892); 30 W. N. C. 520.

⁵⁵Milliken's Estate, 206 Pa. 149 (1903).

⁵⁶Coleman's Estate, 159 Pa. 231 (1893); Schoenberger's Estate, 221 Pa. 112 (1908); Binn's Estate, 25 Pa. C. C. 337 (1901).

not be deducted from such legacy as its proportion of the tax paid to the state.⁵⁷

§ 968. **Tax on personal property of residents.**⁵⁸ Debts due a decedent who was domiciled in Pennsylvania, by persons living in other states, are subject to payment of collateral inheritance tax, under the terms of the Act of 1887, and the liability is not affected by the fact that payment is secured by mortgages on the lands of the debtors in the states in which they severally reside.⁵⁹

Choses in action, such as bonds, stocks, debts, etc., have their situs for taxation at the domicile of their owner, and such property is not relieved from liability to payment of tax by the fact that the legal title thereto is in a non-resident trustee, where the grantor has retained a beneficiary interest therein and control of the disposition of such property upon his death.⁶⁰

§ 969. **Tax collectible only on property whereof decedent died seized or possessed.** Collateral inheritance tax is collectible only upon property of which the decedent died seized or possessed. Hence, where property was settled by will to one in trust for life, with remainder to the right heirs of the testator, and upon the death of the life tenant in trust, it was established that the said life tenant was entitled as the right heir, the estate was awarded to the distributees under the will of the deceased life tenant, free of tax upon her estate. Hence, also, it is incumbent upon the Commonwealth to prove not only that the persons against whom it claims do not belong to the exempted classes, but that the estate in question passed from one seized or possessed of it.⁶¹

The tax fastens upon so much of an estate only as passes to collaterals, as it stands at the death of the testator. Hence, the first year's income of an estate going to non-exempt persons is not subject to tax.⁶²

Where a fund arising from an appropriation made by Congress

⁵⁷Schoenberger's Estate, 221 Pa. 112 (1908). (1893); 32 W. N. C. 376. See § 16.

⁵⁸See § 980.

⁵⁹Stanton's Estate, 15 Pa. C. 17 (1894); 3 D. R. 371; 34 W. N. C. 391; Short's Estate, 16 Pa. 63 (1851).

⁶⁰Lines' Estate, 155 Pa. 378

⁶¹Swann's Estate, 30 W. N. C. 479 (1891); Miller's Estate, 5 Pa. C. 522 (1888); Williamson's Estate, 153 Pa. 508 (1893).

⁶²Williamson's Estate, 153 Pa. 508 (1893).

to pay the heirs of K for the destruction of a ship owned by him, held, that the fund never having been in possession of the ancestor, was not subject to tax when passing to collateral heirs.⁶³

A gave his wife a life estate in all his property and at her death to such of her children as might then be living and the issue of children then deceased. B, one of A's children, died before the life estate of his mother determined, leaving his estate to collaterals. Held, that tax was not due on decedent's share of the residue of his father's estate. "The deceased, having died in the lifetime of his mother, never took any interest in his father's estate, and no collateral inheritance tax can be assessed upon that which never was possessed by or vested in him."⁶⁴

Tax was claimed upon a portion of the estate of M. B., by whose will it was provided that, on the happening of a certain contingency, such portion should pass to her legal heirs. One of said legal heirs, a daughter of the testatrix, died two years before the happening of said contingency. Held, that the portion of the estate of M. B., passing to the heirs of said daughter, was not subject to the tax.⁶⁵

If a grantor execute a deed and deliver the same to a third person to be handed to the grantee when he shall call for it, it is in law a delivery of the deed, though it was not handed to the grantee in the lifetime of the grantor, and is found among the grantor's papers after his death. In such a case, the grantor having devised the same property to the grantee, by his will, no tax is payable, the title to the property being in the grantee at the date of the death of the grantor.⁶⁶

§ 970. When proceeds of life insurance policies are taxable.

"If the policy was payable to his [testator's] legal representative and became part of the estate for the payment of debts and for distribution among his collateral heirs or legatees, it was undoubtedly subject to the payment of collateral inheritance tax, under the provi-

⁶³Kingston's Estate, 28 W. N. C. 284 (1891).

⁶⁴Morris' Estate, 2 W. N. C. 522 (1874).

⁶⁵Matthiessen's Estate, 17 D. R. 201 (1908).

⁶⁶Stinger v. Com., 26 Pa. 422 (1856). Other cases involving

the question whether decedents were possessed of certain real estate at time of death: Waugh's Appeal, 78 Pa. 436 (1875); Morris' Estate, 1 D. R. 818 (1892); Hultz's Estate, 51 Pitts. L. J. 173 (1903); Houston's Estate, 5 D. R. 413 (1896).

sions of the Act of May 6, 1887, P. L. 79, under which 'all estates, real, personal and mixed, of every kind whatsoever, situated within this state,' etc., 'shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates,' etc. If the policy had been taken for the benefit and payment to a third person and had not entered into or become a part of the estate of the decedent, it would have been exempt. . . .

Where, however, the record does not show whether a policy was payable to the decedents' legal representatives, or to a third person, the appellate court will assume that the proceeds of the policy became a part of decedent's estate, and therefore subject to the tax.⁶⁸

Money payable by a beneficial society to a deceased member's next of kin is not part of the decedent's estate, and therefore is not taxable.⁶⁹

§ 971. Amounts paid in compromise of claims against decedents' estates. Collateral inheritance tax is not payable upon moneys paid or property surrendered to compromise the demands of persons claiming the estate adversely to the decedent whose estate is being administered,⁷⁰ nor on moneys allowed to a disinherited son by legatees, although all collaterals, whereby the son's claim is compromised, his caveat withdrawn and the will admitted to probate,⁷¹ but where a testator bequeathed his entire interest in a limited partnership association to his brothers, and his wife, electing to take against his will, was paid a certain sum in full of her claims against the estate, held, that the full value of testator's interest in the partnership association was taxable.⁷²

A testator devised his whole estate to his executors in trust for legatees and devisees. The widow refused to take under the will, but subsequently accepted a sum, which was less than her share of the estate, and relinquished her claim to the remainder. Held, that she took this sum under her paramount title as widow,

"Murphy's Estate, 21 Pa. Super. Ct. 384 (1902); Vogel's Estate, 1 Pa. C. C. 352 (1886). See Folmer's Appeal, 87 Pa. 133 (1878), and Swann's Estate, 30 W. N. C. 479 (1891). See § 969. "Murphy's Estate, 21 Pa. Super. Ct. 384 (1902).

"Vogel's Estate, 1 Pa. C. C. 352 (1886).

"Kerr's Estate, 13 Pa. C. C. 431 (1893); 2 D. R. 535.

"Pepper's Estate, 13 Pa. C. C. 517 (1893); 2 D. R. 611.

"Small's Estate, 151 Pa. 1 (1892).

and not as a payment out of the fund bequeathed to the executors in trust, and that it was not, therefore, subject to tax.⁷³

The parties to a suit to test the validity of a will compromised their claims, in pursuance of which compromise the balance in the hands of the administrator pendente lite paid certain legacies and gave the balance to one of the contestants. Held, that this balance was not a debt due from the proponents, but a part of the estate, and as such subject to the tax.⁷⁴

§ 972. Tax may not be evaded by conveyances to take effect after death of owner. Where, in a conveyance or transfer of property during the lifetime of the owner, the manifest effect of conditions, covenants and stipulations in the deed are such as to clothe the grantee with a naked legal right, liable to be defeated at any time by the powers reserved to the grantor, or in case the grantee should die before the grantor, the right of the state to collateral inheritance tax is not thereby defeated.⁷⁵

The owner of an estate cannot defeat the plain provisions of the collateral inheritance tax law by any device which secures to him for life the income, profits, and enjoyment of his estate. Said law can be evaded only by such a conveyance as parts with the possession, the title and enjoyment during the grantor's life.⁷⁶

A transfer of property to take effect at the death of the grantor does not release the same from the collateral inheritance tax.⁷⁷

A testator by his will bequeathed his property to certain collateral relatives, and for religious and charitable purposes; subsequently he transferred all his property by deed to the persons named as executors in his will, they to receive the income from the same to their own proper use during the life of the testator and at his death to hold the same for the uses and purposes set forth in his will. Held, that the estate was liable to collateral inheritance tax.⁷⁸

The right of the Commonwealth to collect collateral inheritance tax is not defeated by a conveyance or transfer of title to property during the lifetime of the owner, nor by possession taken

⁷³Commonwealth's Appeal. Avery's Estate, 34 Pa. 204 (1859).

⁷⁴Rubincam's Estate, 14 Phila. 306 (1881).

⁷⁵DuBois's Appeal, 121 Pa. 368 (1888).

⁷⁶Reish, Adm'r v. Com., 106 Pa. 521 (1884).

⁷⁷Seibert's Appeal, 110 Pa. 329 (1885); 18 W. N. C. 276.

⁷⁸Seibert's Appeal, 110 Pa. 329 (1885); 18 W. N. C. 276.

under such conveyance, if the enjoyment of the property conveyed is not intended to take effect until the death of the grantor.⁷⁹

A deed of real and personal property to trustees to convey and assign after grantor's decease in accordance with his will, or, in case of his dying intestate, to those who would have been entitled under the intestate laws, is "made or intended to take effect in possession or enjoyment after the death of the grantor," and at the death of the grantor intestate, leaving only collaterals, tax is payable, although the grantor removed to another state and remained there until his death.⁸⁰

The payment of the tax may not be avoided by a confession of judgment to take effect in a testamentary way.⁸¹

An owner of a farm worth \$6,000, without means to improve it, conveyed it by deed to his nephew, tenant and intended heir for \$500 and his maintenance. The deed was withheld from record until after the grantor's death. The consideration was paid and performed. There was no intent to avoid the tax. Held, that the deed was intended to take effect at its date and that no tax was due by the nephew.⁸²

Where a person in her last illness, on the same day that she makes a will, executes a deed to one who is a stranger to her blood, with the intent that the conveyance shall not take effect as a conveyance of title until after the death of the grantor, and this is shown by a lease contemporaneously executed by the grantee to the grantor, and the grantor dies a few days thereafter, the Commonwealth may collect the collateral inheritance tax on the land of the grantee.⁸³

The amount of a promissory note, of uncertain value, as to principal and interest, transferred by a decedent in his lifetime to another, who takes all risk of collection and future profit, the consideration to the transferrer being the payment to him of an annual sum by the transferee so long as the former should live, is not subject to the tax.⁸⁴

⁷⁹*Lines' Estate*, 155 Pa. 378 (1893); *Davenport's Appeal*, 10 Sadler's S. C. Cases 603 (1888).

⁸⁰*Com. v. Kuhn et al.*, 2 Pa. C. 248 (1886); 18 Phila. 403.

⁸¹*Leicht's Estate*, 27 Pa. C. C. 519 (1902); 11 D. R. 313.

⁸²*McCormick's Estate*, 15 Pa.

C. C. 621 (1895). See, however, *Davenport's Appeal*, 10 Sadler's S. C. Cases 603 (1888).

⁸³*Meyers' Estate*, 33 Pa. C. C. 277 (1907).

⁸⁴*Garman's Estate*, 3 Pa. C. C. 550 (1885).

A testator bequeathed his residuary estate to the appellant, a religious corporation. Long before his death he advanced to the corporation on account of the legacy, at different times, sums aggregating four thousand dollars, taking bonds in corresponding amounts for the payment during his lifetime of an annuity or yearly sum equal to interest at six per centum on the advancements. Held, that the moneys so advanced were subject to the tax.⁸⁵

A transfer of shares of railroad stock to legatees by testatrix in her lifetime, reserving to herself the dividends and income for her support, will not avoid the payment of the tax on such shares.⁸⁶

Where a decedent, before his death, assigned certain shares of stock to a trustee, in trust that he would pay the assignor the income thereof for life, and, after his death pay certain sums and annuities to persons named in the declaration of trust, if they should outlive him, and the remainder to purposes to be declared in his will, reserving the right to revoke all trusts therein declared for other persons, but died without such revocation, held, that the sum so assigned was subject to tax.⁸⁷

§ 973. Releases from legacies or devises to collaterals will not relieve from tax. "The release or conveyance by a devisee, legatee or distributee, after the devise, legacy or distributive share has once vested, will not deprive the Commonwealth of the tax. The tax accrues immediately upon the death of the testator or intestate. And payment cannot be evaded by a conveyance or assignment to one whose right of succession is not subject to the tax. A devisee or legatee may waive all claim and refuse the bounty of a testator, or to share as a distributee, but, if he be a collateral heir or stranger to the blood of the testator, the tax remains due and payable."⁸⁸

§ 974. Exemption from tax of bequests and devises for care of burial lots. Hereafter all bequests and devises in trust, for the purpose of applying the entire interest or income thereof to the care and preservation of the family burial lot or lots of the donor in good order and repair perpetually shall be exempt from

⁸⁵Conwell's Estate, 19 Phila. 95 (1888); 22 W. N. C. 183.

⁸⁶Riddle's Estate, 19 Phila. 105 (1888).

⁸⁷Wright's Appeal, 38 Pa. 507 (1861).

⁸⁸Frank's Estate, 9 Pa. C. C. 662 (1891); 20 Phila. 139; 28 W. N. C. 323.

liability for collateral inheritance tax. This act shall take effect on and after the first day of January, one thousand nine hundred and four, and shall not apply to any bequest or devise, as aforesaid, made prior to that time.⁸⁹

Prior to the passage of the foregoing act it was held that tax was payable upon a legacy the interest of which was to be devoted to the care of cemetery lots wherein the relatives of the testatrix were buried, the repair of monuments and the construction of a new one when the one on the lots was past repair, and, under certain contingencies, for the purchase of new lots and the removal of the remains of such relatives thereto,⁹⁰ and this decision led to the passage of said act.⁹¹

But, prior to the passage of the act, it had been held that a tombstone was a legitimate part of the funeral expenses, and the moneys expended therefor free from tax,⁹² and that bequests for the care of burial lots of testators were exempt from the tax.⁹³

Where a will containing a devise for the purpose of caring for testator's cemetery lot was executed before January 1, 1904, testator dying after that date, the Act of May 5, 1903, applies and the devise is not taxable, but a devise for keeping a whole graveyard in repair is taxable.⁹⁴

§ 975. Bequests for charitable and religious uses are taxable. Collateral inheritance tax is payable upon bequests to institutions of purely public charity. It is not a tax within the meaning of the Constitution and the Act of 1874 exempting such institutions from taxation. It is not a tax on the property or thing bequeathed, but a diminution of what might otherwise pass under the will. It is a tax on the right to take rather than on the thing itself.⁹⁵

⁸⁹Act of March 5, 1903, P. L. 12.

⁹⁰Long's Estate, 22 Pa. Super. Ct. 370 (1903).

⁹¹Dingee's Estate, 14 D. R. 225 (1905); Walters' Estate, 3 Pa. C. 447 (1887).

⁹²Porter's Estate, 77 Pa. 43 (1874); Webb's Estate, 165 Pa. 330 (1895).

⁹³Middleton's Estate, 13 D. R. 811 (1904); Dingee's Estate, 14 D. R. 225 (1905); Hurst v.

Caernarvon Cemetery Assn., 1 Lanc. L. R. Co. (1883).

⁹⁴Tax on Bequests for Care of Cemetery, 14 D. R. 470 (1904); S. C., sub nom. Graveyard Taxation, 30 Pa. C. C. 369 (1904).

⁹⁵Finnen's Estate, 196 Pa. 72 (1900); Jamieson's Estate, 31 Pa. C. C. 207 (1905). In Bitteringer's Estate, 129 Pa. 338 (1889), however, the tax is held to be a tax on property.

Requests for religious purposes are also taxable.⁹⁶

§ 976. Legacies and devises in consideration of obligations created by will.⁹⁷ A legacy in consideration of an obligation created by the testator's will is subject to the tax, though the legatee be bound to fulfill the obligation, as where a testator made a bequest to a church, adding "in consideration of this bequest, I desire that said church shall keep in order for all time the graves of my ancestry and family," etc.⁹⁸ Requests to pastors for masses,⁹⁹ and bequests made in consideration of the tolling of a church bell at certain times,¹⁰⁰ are taxable.

When testators bequeath estates on condition that the legatees or devisees, persons not subject to the tax, shall pay legacies¹ or annuities² to non-exempted persons, tax is payable on the amount of such legacies or annuities.

§ 977. Legacies and devises in consideration of obligations of decedents. Where a debt for which a legacy is given is one of legal obligation and the legacy does not exceed the amount due, the latter, if accepted in satisfaction, being regarded as a payment and not as a mere bounty, is not subject to the collateral inheritance tax,³ but this principle does not apply where the legacy is a pure gratuity based upon the performance of services which, if not already compensated, were rendered without liability on the part of the person receiving them.⁴

Where plaintiff received from testatrix a dollar per week on account of services, which was regularly paid to her except during the last illness of testatrix, after which payment was made by the testatrix's executors of the amount due, and the last will and testament of the testatrix contained a devise to plaintiff of a certain house and lot, held, in the absence of a special contract whereby plaintiff was to serve testatrix in consideration of which

⁹⁶Hurst v. Caernarvon Cemetery, 1 Lanc. L. R. 60 (1883); Brewer's Estate, 32 Pitts. L. J. 432 (1884). See § 976.

⁹⁷See § 960.

⁹⁸Walters' Estate, 3 Pa. C. C. 447 (1887).

⁹⁹Seibert's Appeal, 110 Pa. 329; 18 W. N. C. 276 (1885); Rhymer's Appeal, 93 Pa. 142 (1880).

¹⁰⁰Com. v. Gilpin's Executors, 3 D. R. 711 (1893).

¹Nieman's Estate, 131 Pa. 346 (1890).

²Lea's Estate, 194 Pa. 524 (1900).

³Quin's Estate, 13 Phila. 340 (1880); Walter's Estate, 3 Pa. C. C. 447 (1887).

⁴Gibbon's Estate, 16 Phila. 218 (1883).

the devise was to be made, that the devise was a gratuity and subject to the tax.⁵

Where certain legatees under a will claimed that the provision for their benefit was in discharge of an obligation of the decedent, and the heirs deny the validity of the will because of want of testamentary capacity, and the parties make a compromise without fraud or collusion, by which the will is set aside and said legatees are allowed a part of their demand, the payment made to them is not subject to the tax, and payments made to other legatees who had no demand against the estate are also relieved from the tax.⁶

§ 978. Releases by will of indebtedness to testators. The will of testatrix, reciting that A was indebted to her on a bond, declared that, in case he made no demand against her estate for boarding or services rendered her, she bequeathed to him the debt due by him, and directed her executors to cancel the bond. Held, that the legacy was subject to tax.⁷

But the release of a debt, the collection of which is barred by the statute of limitations, is not taxable.⁸

§ 979. When the tax accrues. The collateral inheritance tax accrues at the death of the person whose estate, passing to strangers or collateral heirs, is subject to the tax; and this is so whether the estate passes in actual enjoyment, directly or remotely, upon the termination of an intervening life estate or term of years. Although the remainderman may postpone the payment of the tax until he comes into possession, the time when the tax accrues is not changed.⁹

The tax accrues on decedent's death, unless enjoyment is postponed by a life estate in another, and, except in such case of postponement, the value at the time of the death of the testator, intestate or grantor is the basis for calculating the amount of the tax.¹⁰

§ 980. Domiciles of decedents.¹¹ Where a person dies in

⁵Carst v. Hoover's Executors, 32 Pa. C. C. 77 (1906).

⁶Hawley's Estate, 214 Pa. 525 (1906).

⁷Tyson's Appeal, 10 Pa. 220 (1849).

⁸Stinger v. Com., 26 Pa. 429 (1856).

⁹Mellon's Appeal, 114 Pa. 564 (1886); 18 W. N. C. 544; Frank's Estate, 9 Pa. C. C. 662 (1891); 28 W. N. C. 323.

¹⁰Lines' Estate, 155 Pa. 378 (1893); 32 W. N. C. 376.

¹¹See §§ 966, 968.

a town where he had lived, owned real and personal property, voted and paid a personal tax, it will be deemed to have been his domicile at the time of his death, although he was frequently away from it, owned property in other states and had declared that he expected to reside elsewhere in the future.¹²

But where testator's original domicile was the city of Philadelphia, but he had resided in Paris, France, for a period of fifty years, during which he had visited Philadelphia but four times, he had declared that he never expected to return thither to live, and he had applied to French authorities for a legal domicile in France, held, that his original domicile had been abandoned, and a new domicile established in Paris.¹³

In an earlier case, however, a testator resident in France, bequeathed a sum of money to a French citizen. His will was probated in Philadelphia, his former place of residence, and letters testamentary were granted to a resident of Pennsylvania. His whole estate was in Pennsylvania at the time of his death. Held, that the legacy was taxable so far as it was payable out of personal assets in Pennsylvania.¹⁴

§ 981. Appointment and duties of appraisers of taxable estates. It shall be the duty of the register of wills of the county in which letters testamentary or of administration are granted to appoint an appraiser as often as and whenever occasion may require, to fix the valuation of estates which are, or shall be, subject to collateral inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates, and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable out of the estate at the rate of such valuation. . . .¹⁵

The appraiser must be appointed by the register of wills of the

¹²Dalrymple's Estate, 215 Pa. 367 (1906).

¹³Evan's Estate, 17 D. R. 111 (1908).

¹⁴Com. v. Smith, 5 Pa. 142 (1847). "It is the amount of the estate being within the Commonwealth, passing either by will or descent, that the act makes sub-

ject to collateral inheritance tax, and the domicile has nothing to do with the question." This evidently is not the law now, if it ever was. See, explanatory of this case, Lewis's Estate, 203 Pa. 211 (1902).

¹⁵Sec. 12, Act of May 6, 1887, P. L. 79.

county in which the decedent had his residence, or of the county in which the principal part of his estate is located, and the orphans' court has jurisdiction to determine the domicile of the testator, although a probate court in another state has admitted the will to probate and granted letters testamentary thereon.¹⁶

A deputy register of wills may not be appointed an appraiser, it being to the register's interest that the valuation shall be as high as possible.¹⁷

§ 982. Compensation of appraisers. The compensation of appraisers appointed by the registers of wills of the several counties of the Commonwealth to fix the value of estates which are or may hereafter be subject to collateral inheritance tax shall be as follows, namely: For each and every day on which an appraiser shall actually be engaged in making appraisements of property subject to said tax, he shall receive the sum of two dollars: Provided, that if, in the discharge of his duties, it shall be necessary for him, the said appraiser, to travel from his place of residence to appraise property subject to said tax, he shall be allowed such actual necessary traveling expenses as he may incur, which expenses shall be itemized in a sworn statement to be returned to the register and subject to the final approval of the auditor general.¹⁸

§ 983. Appointment of expert appraisers—Compensation—Employees in offices of registers of wills not to be appointed. It is hereby further provided and enacted that when, by virtue of the complicated nature of an estate subject to the payment of collateral inheritance tax, the interest of the Commonwealth shall require the appointment, as appraiser of said estate, of a person possessed of expert or technical knowledge to ascertain the value thereof, reasonable additional compensation shall be allowed said appraiser for the exercise of such expert or technical knowledge, and in cases where, after the appointment of an appraiser to appraise the value of an estate subject to the payment of collateral inheritance tax, it shall appear that the proper appraisal of said estate will require the services of a person possessed of expert or technical knowledge whereof the

¹⁶Dalrymple's Estate, 215 Pa. 367 (1906).

¹⁷Sec. 1, Act of June 26, 1895, P. L. 325.

¹⁸Johnston's Estate, 6 Del. Co. 591 (1897). See § 983.

appraiser appointed to appraise said estate is not possessed, he, the said appraiser, may employ the services of a person possessed of expert or technical knowledge to assist him in the appraisement of said estate, and for such services the person so employed shall receive reasonable compensation: Provided, that in all such cases the register of wills appointing the appraiser shall certify to the auditor general that there is actual necessity for the appointment of an appraiser possessed of expert or technical knowledge, or that the appraiser already appointed to appraise the estate in question should be assisted by a person possessed of such knowledge, and no person shall be appointed as such expert appraiser, or as expert assistant to an appraiser, without the approval of the auditor general, of said appointment first had and obtained, nor shall any payment be made to any appraiser, or to any person employed by him, under this section, until an itemized statement of the services performed and the compensation recommended shall have been rendered, under oath or affirmation, to the auditor general for his approval and shall have received the same: And provided further, that no clerk or other person employed in the office of a register of wills shall be appointed an expert appraiser of an estate subject to the payment of collateral inheritance tax, nor as an expert to assist the appraiser of such estate.¹⁹

§ 984. Penalty for receiving rewards by appraisers from interested parties. It shall be a misdemeanor in any appraiser, appointed by the register, to make any appraisement in behalf of the Commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin, or heir of any decedent; and for any such offense the register shall dismiss him from such service, and upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either, at the discretion of the court.²⁰

§ 985. Appraisements.²¹ Appraisements and proceedings thereon must be had in the county where administration is granted.²²

It was held, under the acts in force prior to the passage of the

¹⁹Sec. 2, Act of June 26, 1895, P. L. 325. tates and estates in remainder, see §§ 991, 992.

²⁰Sec. 13, Act of May 6, 1887, P. L. 79. ²¹Stinger v. Com., 26 Pa. 429 (1856).

²²For appraisements of life es-

Act of 1887, that an appraisement of property subject to the tax, made in pursuance of law, and not appealed from, was conclusive upon the Commonwealth as to the value of the property,²³ but not of the liability of the estate to the tax,²⁴ and that where an appraiser, with full knowledge of all the facts, erroneously omitted from his appraisement lands situated in another state, which had been converted into personalty under a power of sale in a will, the Commonwealth's only remedy to correct the error was an appeal, a second appraisement being without authority of law.²⁵

The 12th section of the Act of 1887, however,²⁶ provides that on appeal "the courts shall have jurisdiction to determine all questions of valuation" as well as "of the liability of the appraised estate for such tax."

"We are of the opinion that, taking the Act of 1887 as a whole, the clear intention of the legislature was to provide that the property of the decedent subject to the tax should be first appraised by a person duly appointed by the register for that purpose, and to limit the jurisdiction of the court on appeal to a review of the action of the appraiser and of the register as to the appraised estate. In other words, to give the court jurisdiction only to determine whether the valuation put upon the estate by the appraiser was too high or too low, and whether the estate so appraised or any part of it was liable to the tax."²⁷

Under the Act of 1887, where an appraiser omits real estate from his appraisement, because the executor tells him there is no taxable realty, knowing that there is taxable real estate, a second appraisement will be sustained.²⁸

Estates should be appraised for collateral inheritance tax at their value at the time of the appraisement, and the fact that an estate greatly increases in value between the time of the appraisement and the vesting of the estate in remainder confers no right upon the Commonwealth to exact an additional tax.²⁹

²³Com. v. Freedley's Executors, 21 Pa. 33 (1853).

²⁴Stinger v. Com., 26 Pa. 422 (1856).

²⁵Money Penny's Estate, 181 Pa. 309 (1897); 40 W. N. C. 308.

²⁶See § 986.

²⁷Meyer's Estate, 33 Pa. C. C. 277 (1906). See Handley's Estate, 181 Pa. 339 (1897).

²⁸Meyer's Estate, 33 Pa. C. C. 277 (1906).

²⁹DeBorbon's Estate, 211 Pa. 623 (1905). This case was decided under the acts in force prior to the passage of the Act of 1887. Any changes introduced by said act were not discussed.

Where an executor has paid the tax on the whole estate of the testator passing in possession or remainder, no appraisalment need be made of the value of the life estate and the remainder.³⁰

In appraising an estate, where there are unsealed notes against which the statute of limitations might be pleaded, but it is not the intent of the makers or endorsers thereof to plead the same, the amount of such notes may be deducted in arriving at the amount subject to the tax.³¹

When an appraisalment is filed without notice to the person entitled thereto, objection may be made to liability to the tax after the time for appeal has passed.³²

When an estate is appraised for payment of the collateral inheritance tax without any separate valuation of an annuity, or the land upon which it is charged, or a life estate in other property and a remainder expectant thereon, and there is no legacy "upon a condition or contingency," the orphans' court has no authority to appoint an auditor to apportionment the collateral inheritance tax. If it does so, and the apportion is allowed to stand as the proper appraisalment, the costs of audit and appeal therefrom will be charged upon the collaterals through whose neglect the proper appraisalment was not made, and not upon the Commonwealth.³³

Where an appraiser of an estate for collateral inheritance tax adds to his appraisalment "This does not include a note of \$2,000 dated Oct. 2, 1879, which is claimed by Isabella Fossleman, niece of the decedent, and is in litigation on the ground that it was delivered to her before the death of decedent," and it was subsequently judicially determined that Isabella got title to the note by bequest, and the appraiser then added the note to his appraisalment, more than a year after it was originally filed, held that the Commonwealth could recover the tax thereon, though it had not appealed from the original appraisalment. The decision of the appraiser was suspended, and the limitation began to run only from the date at which the note was added to the appraisalment.³⁴

³⁰DeBorbon's Estate, 211 Pa. 623 (1905).

³¹McKee's Estate, 25 Pa. C. C. 589 (1901); 10 D. R. 538.

³²Binn's Estate, 25 Pa. C. C. 337 (1901).

³³Burkhart's Estate, 25 Pa. Super. Ct. 514 (1904).

³⁴Fosselman's Appeal, 2 Penny. 238 (1882).

§ 986. **Appeals from appraisements.** . . . Provided, that any person or persons not satisfied with said appraisalment shall have the right to appeal within thirty days, to the orphans' court of the proper county or city, on paying or giving security to pay, all costs, together with whatever tax shall be fixed by said court, and upon such appeal said courts shall have jurisdiction to determine all questions of valuation,³⁵ and of the liability of the appraised estate for such tax, subject to the right of appeal to the supreme court as in other cases.³⁶

Administrators may appeal from appraisements of the personal property of decedents for the payment of the tax, but only the heirs may appeal from appraisements of real estate.³⁷

Appeals may be taken within thirty days from notice of the filing of the appraisements, and not necessarily from the date of filing the same. The act does not provide for a hearing.³⁸ In the absence of notice the appraisalment does not become final at the expiration of thirty days.³⁹ An appeal taken within thirty days from the date of the correction of an appraisalment by the register is in time.⁴⁰

The only remedy for the correction of an appraisalment for the tax, in the absence of fraud, accident or mistake, is an appeal, upon which all questions of valuation and liability of the appraised estate for the tax may be determined by the court. No appraisalment is valid unless the following procedure is substantially had:

1. Reasonable notice to all parties subject to the tax of time and place of hearing. 2. A hearing. 3. Notice of time of filing appraisalment, to be given not later than the date of filing. 4. The report of the appraiser should show how and to whom such notice was given, or, if not given to all parties, the reasons for failure to give the same. A notice mailed a reasonable time before the hearing to the party's last known address is sufficient.⁴¹

³⁵See § 985.

³⁶Sec. 12, Act of May 6, 1887, P. L. 79.

³⁷Com. v. Coleman's Admr., 52 Pa. 468 (1866).

³⁸Belcher's Estate, 211 Pa. 615 (1905); 12 D. R. 774.

³⁹Binn's Estate, 25 Pa. C. C. 337 (1901).

⁴⁰McGeary's Estate, 31 Pitts. L. J. 174 (1883).

⁴¹Belcher's Estate, 211 Pa., 615; 12 D. R. 774 (1903); Money-penny's Estate; Lockwood's Appeal, 181 Pa. 309 (1897); DeBorbon's Estate, 211 Pa. 623 (1905).

Upon an appraisal for tax, a credit was allowed for the United States legacy tax, which was paid under protest, and afterwards recovered in an action in the Federal courts. Held, that the tax could not be collected upon the net balance so refunded, after the time fixed for appeal had expired.⁴²

An appeal will be dismissed when no evidence is presented, and when the record before the register, brought up by the appeal, fails on its face to show the commission of error.⁴³

No appeal lies to the Supreme Court from a decree of an orphans' court dismissing a motion to quash an appeal from an appraisalment.⁴⁴

§ 987. Duties of registers of wills. It shall be the duty of the register of wills to enter in a book, to be provided at the expense of the Commonwealth, to be kept for that purpose, and which shall be a public record the returns made by all appraisers under this act, opening an account in favor of the Commonwealth against the decedent's estate, and the register may give certificates of payment of such tax from said record, and it shall be the duty of the register to transmit to the auditor general, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes remain unpaid, which statement shall be entered by the auditor general in a book to be kept by him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans' court, by bill or petition, to enforce the payment of the same, whereupon said court, having caused due notice to be given to the owner of the real estate charged with the tax, and to such other persons as may be interested, shall proceed, according to equity, to make such decrees, or orders for the payment of the said tax, out of such real estate, as shall be just and proper.⁴⁵

§ 988. Citation of executors or administrators of estates on which tax is not paid—Suits for recovery of such tax—Fees and expenses. If the register shall discover that any collateral inheritance tax has not been paid over, according to law, the orphans' court shall be authorized to cite the executors

⁴²Allison's Estate, 18 D. R. 438 (1909).

⁴³Goldstein's Estate, 14 W. N. C. 176 (1884).

⁴⁴Belcher's Estate, 205 Pa. 153 (1903).

⁴⁵Sec. 14, Act of May 6, 1887, P. L. 79.

or administrators of the decedent, whose estate is subject to the tax, to file an account or to issue a citation to the executors, administrators, or heirs, citing them to appear on a certain day and show cause why the said tax should not be paid, and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county, and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax and costs. And it shall be the duty of the register, or the auditor general, to employ an attorney, of the proper county, to sue for the recovery and amount of such tax, and the auditor general is authorized and empowered, in settlement of accounts of any register, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of tax.⁴⁶

The tax is due the Commonwealth one year after the death of the decedent, and where the parties interested fail to pay the tax or to file an inventory whereby the register may ascertain the amount thereof, the orphans' court, upon application of the Commonwealth, under the provisions of the foregoing section, has jurisdiction to compel the parties liable to furnish the appraiser with all the information necessary to properly assess the tax.⁴⁷

A citation to executors may be amended so as to cite the devisees, in a case of a devise of real estate with which the executors have nothing to do.⁴⁸

Either the auditor general or the register of wills of the proper county may appoint attorneys for the collection of the tax. Where each officer appoints, the appointment first made is effectual. The responsibility for the acts of such counsel rests with the officer making the appointment.⁴⁹

§ 989. When bequests or devises to executors are taxable. Where a testator appoints or names one or more executors, and makes a bequest or devise of property to them, in lieu of their commissions or allowances, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies, exceed what would be a fair compensation for their services, such excess shall be subject to the payment of the collateral inheritance tax;

⁴⁶Sec. 15, Act of May 6, 1887, P. L. 79.

⁴⁷Maris's Estate, 14 Pa. C. C. 171 (1893); 3 D. R. 33.

⁴⁸Lisle's Estate, 22 Pa. Super. Ct. 262 (1903).

⁴⁹Collateral Inheritance Tax, 12 D. R. 399 (1903); 6 Dauph. Co. Rep. 55.

the rate of compensation to be fixed by the proper courts having jurisdiction in the case.⁵⁰

§ 990. Taxation of life estates and estates in remainder—Tax payable when—Taxes on real estate are liens until paid. In all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid: Provided, that the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases, the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years: And provided further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid.⁵¹ And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county within one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such register; and in case of failure so to do, the tax shall be immediately payable and collectible.⁵²

§ 991. Life estates. The life estate is to be first called upon to pay taxes and the interest on incumbrances in exoneration of the remainderman or reversioner.⁵³

Where an estate has been left for life to a collateral relative or a stranger, with remainder over, the tax on the life estate is payable primarily out of the corpus, but must be refunded out of the first income received.⁵⁴

It is the duty of the appraiser, in ascertaining the value of a

⁵⁰Sec. 2, Act of May 6, 1887, P. L. 79.

⁵¹See § 1006.

⁵²Sec. 3, Act of May 6, 1887, P. L. 79.

⁵³McDonald v. Heylin, 4 Phila. 73 (1860); Jewell's Estate, 11 Phila. 73 (1875).

⁵⁴Christian's Estate, 18 Phila. 32 (1886); 18 W. N. C. 88.

life estate in real and personal property, to consider testimony that may be offered as to the probable net income of the estate. The practice of appraising life estates on the theory that the annual income therefrom will be six per centum is disapproved.⁵⁵

Prior to the passage of the Act of 1887 it was held that existing law provided no rule for computing the value of life estates, leaving that to the discretion of the register, and no appeal from his assessment could be sustained unless the record of the proceedings before him showed upon its face the commission of an error.⁵⁶

In calculating the collateral inheritance tax on life estates, they should be appraised at their cash value in the same manner as annuities.⁵⁷

"Calculate the interest at five per cent. for one year upon the sum to the income of which the person is entitled. Multiply this by the number of years' purchase set opposite the person's age in the [annuity] table, and the product is the gross value of the life estate of each person in said sum."⁵⁸

When real estate in trust for a life tenant and remainderman is sold under the Price Act (Act of April 18, 1853) and the trustee pays the collateral inheritance tax, assessed against the life tenant's interest, but does not reimburse himself out of the income, he cannot upon the filing of his account claim to be reimbursed out of the principal.^{58a}

Where an estate was left to the widow of the decedent for life with power of sale and consumption, with remainder at her death to collaterals, held that the appraisalment of tax was suspended until her death.^{58b}

Testator bequeathed to his adopted daughter certain stock, "the dividends to be used for the education and support of said Marguerite, and the said stock shall be held by my executors in trust, until she is twenty-five years of age, when it shall go to her if she be alive, or if dead prior to that time, to the heirs of her

⁵⁵Kaas's Estate, 5 Pa. C. C. 583 (1888); 19 Phila. 71.

⁵⁶Goldstein's Estate, 16 Phila. 319 (1883).

⁵⁷Van Storch's Estate, 20 Pa. C. C. 555 (1898); 7 D. R. 204, op. Atty. Gen.; Handley's Estate, 181 Pa. 339 (1897).

⁵⁸Dos Pasos on Inheritance Tax Laws, p. 539.

^{58a}Penn-Gaskell's Estate (No. 1), 208 Pa. 342 (1904).

^{58b}Gaston's Estate, 55 Pitts. 223.

body, if any there be (meaning dividends), until they become of age, then said stock shall revert to my estate, and in addition to the above, if I shall die of sufficient estate that will justify the giving an income on \$15,000 in addition to the above mentioned gas stock, my executors shall pay the income to her, or her guardian and the sum itself when she reaches the age of twenty-five years." Held, that there was no precedent estate for life or years so as to postpone payment of tax on said bequest, and that the tax was presently due and payable.⁵⁹

§ 992. **Estates in remainder.** The word "owner" as used in § 3 of the Act of May 6, 1887, P. L. 79, relating to collateral inheritance tax on estates in remainder, refers to the remainderman and not to the executor. The intent of the estate is to charge the beneficiary of the estate, and whether the phrase used is "person liable," or person who "shall come into actual possession," or "owner," it always means the same person, viz, the remainderman.⁶⁰

Executors cannot be compelled to make present payment of the tax on estates in remainder, because they are not the parties primarily charged with the payment, either present or future, and are not responsible for the owner's default of return and giving of security which makes the future tax payable immediately.⁶¹

If the owners of estates in remainder after the termination of a life estate can be positively ascertained and identified immediately after the testator's death, they must make the return and enter security for the tax, or the tax becomes immediately payable and collectible under § 3 of the Act of May 6, 1887, but when they cannot be ascertained, the provision of said section making the tax at once payable, does not apply. In such a case the Commonwealth cannot compel any one to give security to pay the tax, but must wait until the termination of the life estate, or such other time as the remaindermen may be ascertained.⁶²

When collateral heirs come into possession of an estate after

⁵⁹Jamison's Estate, 34 Pa. C. C. 417 (1907).

⁶⁰Coxe's Estate, 181 Pa. 369 (1897); 193 Pa. 100 (1899); 40 W. N. C. 311.

⁶¹Coxe's Estate, 181 Pa. 369 (1897); 193 Pa. 100 (1899); 40 W. N. C. 311.

⁶²Coxe's Estate, 193 Pa. 100 (1899); Christian's Estate, 2 Pa. C. C. 91 (1886).

the expiration of a preceding life estate, they are liable for tax only on the clear value of the estate passing from the decedent, with interest thereon from the time the right of possession accrues to them as the owners thereof.⁶³

In *Coates' Appeal*, 2 Pa. 129 (1845), it was held that an absolute estate given by will was reduced to a life estate, with remainder in trust, by succeeding words of desire, expectation or confidence, both as to realty and personalty. In 1853, however, in *Pennock's Appeal*, 20 Pa. 268, it was held that such words in a will, following an absolute gift, do not, per se, reduce the original gift, or create a trust in favor of the persons commended. The decision in *Pennock's Appeal*, however, does not change rights which vested before the rule as declared in *Coates' Appeal* was rescinded.⁶⁴

Testatrix divided her realty in equal shares to her four children, naming them "her heirs and assigns." She further directed that they in making their wills, give the property received through her will to the direct heirs of her husband and herself, unless the strongest reasons should urge them to the contrary. Three of the children died successively, leaving their portions to the survivors, and, on the death of the last survivor, she devised the whole of the real estate to her nephews and nieces. Held, that such last survivor held three-fourths of such estate, under the devises of other donees, absolutely, and only one-fourth under the limitations of the original will, and that the Commonwealth was entitled to collateral inheritance tax on the three-fourths' interest.⁶⁵

Remainders contingent upon devisees surviving the first takers are subject to the collateral inheritance tax, but the tax need not be paid until the estate vests in actual possession, if security is entered for the payment of the same.⁶⁶

The tax does not attach to the articles of property of decedent, but to what remains for distribution after expenses, debts, etc., are paid, or after the termination of a particular precedent estate. Whether a taxable surplus will be left for a remainderman, after a power of disposition has been exercised, cannot be determined until after the expiration of the time during which the power is

⁶³*Cooper v. Com.*, 5 Pa. C. C. 271 (1888).

⁶⁴*Lisle's Estate*, 22 Pa. Super. Ct. 262 (1903).

⁶⁵*Lisle's Estates*, 22 Pa. Super. Ct. 262 (1903).

⁶⁶*Willing's Estate*, 11 Phila. 119 (1876).

to be exercised. Hence, if the exercise of the power is such as to destroy the surplus, there is nothing on which the tax can be computed.⁶⁷

Where, under the terms of a will, a widow has power to appropriate the residuary estate to her own use during life, with a disposition over, the amount of the tax on the remainder cannot be ascertained until her death.⁶⁸

§ 993. Annuities. The present cash value of an annuity is such a sum as invested and put at interest will, with a proportionate part taken from the fund yearly to make out the annuity, yield the required amount of it annually, the whole fund being exhausted during the expectancy of life of the annuitant.⁶⁹

Where a testator bequeaths a part of his estate in trust to invest and pay to one not a lineal descendant the sum of \$300.00, during her life, and provides that "the said \$300.00 shall be paid without respect to the income from this part, whether it be more or less than \$300.00, and until the entire fund is exhausted, if she shall live so long," and that, after the death of the cestui que trust, the balance of the fund remaining shall go to the testator's children, tax should be collected only upon the annual payments as they fall due and not upon the entire sum.⁷⁰

Where a testator leaves an annuity to collaterals, but the provision therefor was apparently by way of caution to protect an annuity purchased for value in the lifetime of the testator, said annuity is not liable to tax.⁷¹

Where an annuity is given by testator's will to a daughter for life, providing that, if the daughter die before her youngest child shall have arrived at legal age, said annuity is to be paid to the daughter's husband, "or the guardian that may be of said children," said legacy is evidently given to the daughter's husband for the use of his children, and is not subject to tax.⁷²

§ 994. Discount for prompt payment of tax—Interest on deferred payments. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a

⁶⁷Lick's Estates, 12 D. R. 573 (1903), op. Atty. Gen.

⁶⁸Nieman's Estate, 131 Pa. 346 (1889).

⁶⁹Jamieson's Estate, 31 Pa. C. 207 (1905).

⁷⁰Crompton's Estate, 10 Pa. C. 443 (1791); 20 Phila. 169; 29 W. N. C. 36.

⁷¹Morris's Estate, 1 D. R. 818 (1892).

⁷²Morris's Estate, 1 D. R. 818 (1892).

discount of five per centum shall be made and allowed; and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of twelve per centum per annum on such tax; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of the year from his or her decease, six per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default: Provided further, that where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been, or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay a greater amount as interest to the Commonwealth than they have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.⁷³

An executor will not be charged the penalty of twelve per centum upon the collateral inheritance tax, when it appears that he was compelled to engage in extensive and protracted litigation in another state to recover a large proportion of the estate; that the litigation as to part of the estate was not ended at the time of the adjudication, and that the question whether the portion of the estate situated out of the Commonwealth was liable for collateral inheritance tax was not determined until the final decree of the orphan's court.⁷⁴

When the failure to pay the tax within one year from the death of the decedent is due to an honest doubt as to who was liable for the tax, the penalty of twelve per centum should not be imposed.⁷⁵

When an executor neglects to pay the tax awarded at the audit of his account, he is properly chargeable with the penalty imposed by the state for delay, but when no award has been made and the tax is properly payable by another person he is subject to no liability whatever.⁷⁶

⁷³Sec. 4, Act of May 6, 1887, P. L. 79.

⁷⁴Miller's Estate, Dorris' Appeal, 182 Pa. 157 (1897). See Bank's Estate, 5 Pa. C. C. 614 (1888).

⁷⁵Sprinkle v. Com., 2 Walker 420 (1884); Com. v. Ebervale Coal Co., 2 Pears. 421.

⁷⁶Allen's Estate, 20 Phila. 101 (1891); 9 Pa. C. C. 328.

The Act of May 6, 1887, P. L. 79, does not repeal the provision of the Act of May 4, 1855, P. L. 425, imposing a charge of six per cent. per annum in cases where the twelve per cent. charge is not to be enforced. Where there has been such unavoidable cause of delay in the settlement of an estate as to relieve from payment of the twelve per cent. charge, originally imposed by § 1, Act of May 4, 1855, P. L. 425, the six per cent. per annum charge runs from one year after the decedent's death.⁷⁷

Voluntary payment by a legatee of the tax upon a bequest, after and in compliance with a decree of the orphans' court, fixing the amount thereof, will not bar the Commonwealth's right to afterwards appeal from the decree for error in not requiring the payment of the six per cent. charge in addition.⁷⁸

When an award of the amount of the collateral inheritance tax on a money legacy is made to an executor, and he neglects to pay the same, he is personally liable for the penalty incurred for non-payment of the tax.⁷⁹

To toll the penalty for non-payment of tax after the expiration of a year, litigation must be such as withholds the real and personal estate from the parties entitled thereto. Where the executor and legatees unsuccessfully resist the Commonwealth's claim to the tax, the judgment bears interest from one year from decedent's death.⁸⁰

§ 995. Payment of tax by executors, administrators, etc. The executor, or administrator, or other trustee, paying any legacy or share in the distribution of any estate, subject to the collateral inheritance tax, shall deduct therefrom at the rate of five dollars in every hundred dollars, upon the whole legacy or sum paid; or if not money, he shall demand payment of a sum, to be computed at the same rate, upon the appraised value thereof, for the use of the Commonwealth; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall

⁷⁷Commonwealth's Appeal, 128 Pa. 603 (1889); 24 W. N. C. 473.

⁷⁸Allen's Estate, 9 Pa. C. C. 328 (1891); 20 W. N. C. 101.

⁷⁹Commonwealth's Appeal, 128 Pa. 603 (1889); 24 W. N. C. 473.

⁸⁰Small's Estate, 12 Pa. C. C. 226 (1892); 2 D. R. 27.

be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed, as is or may be directed by law; and every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share, for the use of the Commonwealth, shall be paid by him without delay.⁸¹

The rates of tax are regulated by the laws existing at the time of the original testator's death.⁸²

"The executors are nowhere made chargeable with the tax until the distribution, at which time, under § 5 of the Act of May 6, 1887, P. L. 79, they are required to deduct it from the payment to the legatees, and in case of failure to do so they and their sureties are chargeable with the amount. . . . If distribution is unduly delayed the Commonwealth under § 15 of the Act of 1887 may have a citation to the executors to file an account, or to show cause why the tax should not be paid. By this section the Commonwealth as to the tax, is put upon the same footing as a legatee or creditor with a right to enforce distribution at the proper time. If legacies have been paid and the tax deducted but not paid over, the executors are immediately chargeable with it, and if legacies are due and properly payable, but not yet paid, it would seem that the Commonwealth is entitled to insist on the immediate deduction of the tax by the executors and its payment."⁸³

§ 996. Payment of tax on life estates or estates for terms of years. If the legacy subject to collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the orphans' court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.⁸⁴

§ 997. Payment of legacies charged upon or payable out of real estate. Whenever such legacy shall be charged

⁸¹Sec. 5, Act of May 6, 1887, P. L. 79.

⁸²Handley's Estate, 181 Pa. 339 (1897), per Mitchell, J.

⁸³Parke's Estate, 30 Pa. C. C. 191 (1904).

⁸⁴Sec. 6, Act of May 6, 1887, P. L. 97.

upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor; and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the decree of the orphans' court, in the same manner as the payment of such legacy may be enforced.⁸⁵

"This simply provides a method of collection where by law the tax is payable by the collateral legatee or devisee; it would be a strained construction to hold that it was applicable to a lineal devisee. . . . The machinery by which the payment of the tax can be enforced under this section applies only where the devise is to a collateral."⁸⁶

§ 998. Executors and administrators to notify registers of wills of taxable real estate. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the register of the county, where administration has been granted, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof to the register having jurisdiction of the granting of administration.⁸⁷

§ 999. Receipts for payments of tax. It shall be the duty of any executor or administrator, on the payment of collateral inheritance tax, to take duplicate receipts from the register, one of which shall be forwarded forthwith to the auditor general, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office, and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register, unless the receipt is so sealed and countersigned by the auditor general.⁸⁸

⁸⁵Sec. 7, Act of May 6, 1887, P. L. 97.

⁸⁶Lea's Estate, 194 Pa. 624 (1900).

⁸⁷Sec. 8, Act of May 6, 1887, P. L. 97.

⁸⁸Sec. 9, Act of May 6, 1887, P. L. 79.

§ 1000. Foreign executors or administrators to notify registers of wills of assignments of securities. Whenever any foreign executor, or administrator, or trustee, shall assign or transfer any stocks or loans in this Commonwealth, standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.⁸⁹

§ 1001. Repayment of tax in case of discovery of debts after distribution of legacies. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer, if it has been so paid.⁹⁰

§ 1002. Compensation of registers of wills for collection of tax. The register of wills of the several counties of this Commonwealth, upon their filing with the auditor general the bond hereinafter required, shall be the agents of the Commonwealth for the collection of the collateral inheritance tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain for their own use five per centum upon the collateral inheritance tax collected, if the said tax shall amount to a sum less than two hundred thousand dollars in any year; or four per centum upon the said tax, if the same shall amount to two hundred thousand dollars and less than three hundred thousand dollars in any year; or three per centum upon the said tax, if the tax collected shall amount to three hundred thousand dollars or more in any year: Provided further, that this section shall not apply to the fees of the registers elected prior to the passage of this act.⁹¹

The foregoing provision applies as well to registers in counties having a population of one hundred and fifty thousand or more

⁸⁹Sec. 10, Act of May 6, 1887, P. L. 79.

⁹⁰Act of May 14, 1891, P. L. 59, amending § 16, Act of May 6,

⁹¹Sec. 11, Act of May 6, 1887, P. L. 79.

1887, P. L. 79.

as to other counties. The registers of wills of all counties are entitled to commissions on the collateral inheritance tax collected by them and paid into the state treasury. Said provision repeals the Act of March 31, 1876, P. L. 13, providing that commissions on the tax shall be paid into the county treasury.⁹²

The 16th section of the Act of May 6, 1887, P. L. 79, before amendment, provided that registers of wills might retain for their own use "such percentage as may be allowed by the auditor general, not exceeding five per centum on all taxes paid and accounted for."

§ 1003. Bond of registers as collectors of tax. The said register shall give bond to the Commonwealth in such penal sum as the orphans' court of the county may direct, with two or more sufficient sureties for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received; and said bond, on its execution and approval by the said orphans' court, to be forwarded to the auditor general.⁹³

§ 1004. County treasurers to collect tax until bonds are given by registers. Until bond and security be given, as required by the preceding section, the said collateral inheritance tax shall be received and collected by the county treasurer as heretofore; and in such cases all the provisions of this act relating to collection and payment by registers shall apply to the county treasurer.⁹⁴

§ 1005. Returns and payments of tax by registers—Interest on deferred payments. It shall be the duty of the register of wills of each county to make returns and payment to the state treasurer of all the collateral inheritance taxes he shall have received, stating for what estate paid, on the first Mondays of April, July, October and January, in each year; and for all taxes collected by him, and not paid over within one month after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.⁹⁵

§ 1006. Lien of tax.⁹⁶ The lien of the collateral inherit-

⁹²Allegheny County v. Stengel, 213 Pa. 493 (1906).

⁹³Sec. 17, Act of May 6, 1887, P. L. 79.

⁹⁴Sec. 18, Act of May 6, 1887, P. L. 79.

⁹⁵Sec. 19, Act of May 6, 1887, P. L. 79.

⁹⁶See § 990.

ance tax shall continue until the said tax is settled and satisfied: Provided, that the said lien shall be limited to the property chargeable therewith: And provided further, that all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate: And provided further, that all taxes due and legally demandable at the date of the passage of this act, the collection of which would be barred by the provisions hereof, shall not be barred if suit be brought therefor within one year from the date of the passage of this act.⁹⁷

The provision in the foregoing section that taxes not sued for within five years shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate, supersedes the provisions of § 3, Act of May 4, 1855, P. L. 425, by which the presumption of payment arose after twenty years, instead of five.

The proviso was intended simply to quiet the title of purchasers of real estate, and that is the extent of its operations. When there is no purchaser to protect, the lien of taxes due upon real estate, as well as the debt itself, will continue after five years, notwithstanding that suit is not brought within that time, and the tax may be collected from the person taking the estate liable thereto, at any time;⁹⁸ but, after forty-two years tax will be presumed to have been paid, not only upon the ground of lapse of time, but also from the presumption that the executor did his duty.⁹⁹

The Commonwealth is not barred from collecting the collateral inheritance tax by proceedings begun more than five years after the passage of the Act of 1887, where, prior to the passage of said act, the widow bought the estate in remainder from collateral heirs.¹⁰⁰

In case of an equitable conversion of land under a will, the lien of the collateral inheritance tax is transferred from the land to the fund produced by its sale.¹

⁹⁷Sec. 20, Act of May 6, 1887, P. L. 79.

⁹⁸Mellon's Appeal, 114 Pa. 564 (1886); 18 W. N. C. 544; Cullen's Estate, 8 Pa. C. C. 234 (1890); 142 Pa. 18 (1891).

⁹⁹Stewart's Estate, Bell's Appeal, 147 Pa. 383 (1892). See Ash's Estate, 202 Pa. 422 (1902).

¹⁰⁰Butler's Estate, 14 Pa. C. C. 667 (1894).

¹Brown's Estate, 18 Pa. C. C. 145 (1896).

A was seized of an undivided one-third interest in certain real estate. At his death a collateral inheritance tax accrued to the Commonwealth by reason of such undivided interest passing to collateral heirs, his co-tenants, and partition of such interest was made among his said heirs. The purpart allotted to one was sold on a judgment against him at judicial sale, the amount realized from the sale being more than sufficient to pay all the tax upon the entire estate, but the Commonwealth made no claim therefor, and the proceeds were distributed in the payment of other liens. Held, that the partition of the real estate did not have the effect of apportioning the lien of the tax, and that the lien of the entire tax upon all of the real estate was divested by the sale.²

§ 1007. **Repeal of inconsistent acts.** All laws or parts of laws, heretofore approved, relating to the collection of the collateral inheritance tax, and inconsistent herewith, be and the same are hereby repealed.³

§ 1008. **Payment of tax out of the residuary estate.** The residuary estate is not liable for collateral inheritance tax except where the testator expressly directs that legacies and devises shall be free and discharged from the tax,⁴ and such direction must be clear and express.⁵

A mere declaration that a devise is "clear of all charges and incumbrances" is not sufficient to relieve the devisees from the payment of the tax,⁶ nor is a bequest to a person "for the many acts of kindness shown me, and in fulfillment of promises heretofore made, sixty shares of Pennsylvania railroad stock, *in full*."⁷

A testator provided that all his devisees should pay and discharge "all taxes, ground-rents and other legal and necessary charges upon the real estate devised to them," etc., when the same became due and payable; also, that "not wishing such gifts, devises and bequests to be at all interfered with or lessened," all

²Mellon's Appeal, 114 Pa. 564 (1886). See, however, Martin's Estate, 36 Pitts. L. J. 145 (1888).

³Sec. 21, Act of May 6, 1887, P. L. 79.

⁴Shippin et al. v. Burd's Executors, 42 Pa. 461 (1862); Jones's Estate, 27 C. C. 139 (1902); 12 D. R. 83; Cumming's Estate, 1 D. R. 485 (1892); 12 Pa. C. C. 45.

⁵Horter's Estate, 1 Pears. 124 (1862); Holbrook's Estate, 18 Phila. 180 (1887); Murphy's Estate, 18 Phila. 239 (1887); 4 Pa. C. C. 336; Thomson's Estate, 12 Phila. 36 (1878); Miller's Estate, 20 Lans. L. R. 42 (1902).

⁶Forbes's Estate, 16 Phila. 356 (1884).

⁷Murphy's Estate, 4 Pa. C. C. 336 (1887); 18 Phila. 239.

legitimate charges against his estate were to be paid by his executors. Held, that the devisees and not the executors were bound to pay the tax.⁸

Where a testator, after making certain bequests, gave to his brother and sister "all the rest and residue of my estate after payment of the foregoing bequests, and after payment of all taxes, costs and expenses of whatsoever kind in the settlement of my estate," his executors are not required to pay the tax on the legacies out of the residue of the estate.⁹

But where a testator gives his estate to his executors in trust "to collect the income and, after deducting any and all necessary expenses, to divide the net income in equal shares" among the persons named, who were of different ages, held, that the tax should be paid from the general income as distinguished from the income of each beneficiary,¹⁰ and a provision in a will that all legacies shall be paid "clear of taxes,"¹¹ or "without deductions for state tax,"¹² or that a sum be set aside out of an estate sufficient to pay a "net income" of a certain amount, makes the tax payable out of the residuary estate.¹³

Where a testator gives a certain sum to his executors to invest and pay the income to a certain legatee, directing further that "all taxes, federal and state upon the bequest made shall be paid out of my estate and not deducted from such bequest," all present taxes, including the collateral inheritance tax, are to be paid out of the estate, but no sum over the amount of the legacy is to be set aside to provide income to pay future taxes on the fund.¹⁴

A testator created an annuity as follows: "I give, etc., all my estates, etc., to my executors in trust to pay over to P., etc., the annual income of \$1,200, the first quarterly payment of \$300 to date from my death and to be made forthwith; such payment to continue during her life." Held, that the collateral inheritance tax on the annuity should be paid out of the residuary estate.¹⁵

⁸*Shippin et al. v. Burd's Executor's*, 42 Pa. 461 (1862).

⁹*Jones's Estate*, 27 Pa. C. C. 139 (1902); 12 D. R. 83.

¹⁰*Brown's Estate*, 208 Pa. 161 (1904); 12 D. R. 123 (1903); 28 Pa. C. C. 289.

¹¹*King's Estate*, 11 Phila. 26 (1875); 1 W. N. C. 250.

¹²*Lea's Estate*, 194 Pa. 524 (1900).

¹³*Bispham's Estate*, 6 Pa. C. C. 459 (1889); 24 W. N. C. 79; 19 Phila. 155.

¹⁴*Magee's Estate*, 205 Pa. 37 (1903).

¹⁵*Bispham's Estate*, 6 Pa. C. C. 459 (1889); 19 Phila. 155; 24 W. N. C. 79.

Where the residuary devisee of land elects to pay out of rents accrued after the testator's death a pecuniary legacy charge on the land, the payment is not voluntary, but by gift of the testator, and, under the Act of May 6, 1887, is subject to the tax. It is immaterial whence the money is derived, provided only it comes from the devisee.¹⁶

Where tax has been paid on lands of a non-resident in Pennsylvania, converted to personalty by his will, to which the state under a decision rendered subsequent to such payment was not entitled, and the whole burden of the tax would fall on the residuary legatees, a specific legacy which should of right be taxed, but has been awarded free therefrom, will not be reduced by the amount of the tax on it, for the benefit of such final distributees.¹⁷

§ 1009. **Miscellaneous.** Where the payment of legacies only is postponed and the legatees are to receive not only the principal of the legacy but also the interest or income accruing thereon, the payment of the tax is not postponed.¹⁸

Where tax is due in the first instance by the estate of a decedent, it is the duty of the accountant to see to its payment before parting with the fund. The question whether the distributee, under power of appointment given by the original testator, has a claim against the estate of the appointor, under the will of the latter, for reimbursement, can be determined only when the appointor's estate is before the court for adjudication.¹⁹

Testator bequeathed his whole estate practically to his executors in trust to pay the income to testator's parents, brothers and sisters "in equal proportions, and to the issue of any of said brothers and sisters in case of their death, semi-annually for and during the term of their natural lives, and the lives of the survivors of them. . . . And after the death of my said father and mother, or any of my said brothers and sisters, without issue, then in such an event, the portions of the income of my estate so to be paid to them during their life shall go to the survivor or survivors thereof for and during the remainder of their natural lives, and after the death of my said father and

¹⁶Clarke's Estate, 28 Pa. C. C. 270 (1903).

¹⁷Shonenberger's Estate, 221 Pa. 112 (1908).

¹⁸Dalrymple's Estate, 215 Pa. 367 (1906).

¹⁹Greeve's Estate, 8 D. R. 287. (1899).

mother and all of my said brothers and sisters, as aforesaid, then my estate shall descend to the issue of any such brothers and sisters who may be living, share and share alike, in fee." Held, that the brothers and sisters did not take a fee under the rule in Shelley's case, and that their estates were not taxable as such.²⁰

Where a testator had, in his lifetime, made an assignment for the benefit of creditors, the balance remaining after the payment of his debts, retransferred to his executors and passing to collaterals, is taxable.²¹

Where a will provides that the executors and trustees are hereby empowered to sell sufficient property to pay any debts and expenses, collateral inheritance tax and legacies bequeathed before any division is made, the tax is to be paid by the estate.²²

§ 1010. Refund of tax paid in error. In all cases where any amount of collateral inheritance tax has heretofore been paid or may hereafter be paid erroneously to the register of wills of the proper county, for the use of the Commonwealth, it shall be lawful for the state treasurer, on satisfactory proof rendered to him by said register of wills of such erroneous payment, to refund and pay over to the executor, administrator, person or persons who may have heretofore paid or may hereafter pay any of such tax in error, the amount of such tax thus erroneously paid: Provided, that all such applications for the repayment of such aforesaid tax, erroneously paid in the treasury, shall be made within two years from the date of said payment, except when the estate, upon which such tax has been erroneously paid shall have consisted in whole or in part of a partnership, or other interest of uncertain value, or shall have been involved in litigation, by reason whereof there shall have been an overvaluation of that portion of the estate on which the tax has been assessed and paid, which overvaluation could not have been ascertained within said period of two years; then and in such case, the application for repayment shall be made to the state treasurer within one year from the termination of such litigation, or ascertainment of such overvaluation, or if that period has already

²⁰Belcher's Estate, 211 Pa. 615 (1905).

²¹Habecker's Estate, 26 Lanc. 100 (1908).

²²Abraham's Estate, 25 Montg. 13 (1908).

expired at the time of the passage of this act, then within six months after the passage of this act, notwithstanding any limitation contained in any previous act of Assembly.²³

Tax collected on account of a specific devise of lands located in Kansas may be refunded by the state treasurer upon presentation of proper proofs.²⁴

§ 1011. Refund of tax where heirs are discovered.

In all cases where a collateral inheritance tax has heretofore been paid, or may hereafter be paid, to the register of wills of the proper county, for the use of the Commonwealth, and it shall afterwards be made to appear in the proper courts that the estate is not subject to a collateral inheritance tax, on account of the lineal heirs being subsequently discovered, it shall be lawful for the state treasurer to refund and pay over to the executor, administrator, or person or persons who may have heretofore paid, or may hereafter pay, such collateral inheritance tax erroneously, the amount of such tax paid into the treasury.²⁵

§ 1112. Refund of direct inheritance tax. Whereas, the courts of this Commonwealth have declared the direct inheritance tax law of May twelfth, one thousand eight hundred and ninety-seven unconstitutional;

And whereas, a number of administrators and executors of the estates of decedents, residents of the Commonwealth, paid into the state treasury the tax imposed by said act of Assembly, therefore.

The auditor general of this Commonwealth is hereby authorized and directed to issue to such executors and administrators a refunding cheque or voucher, on the state treasurer of the Commonwealth of Pennsylvania, for the sums respectively paid into the state treasury by virtue of the said act of assembly.²⁶

The state treasurer of this Commonwealth be, and is, authorized and directed to pay to the holders of said cheques or vouchers the respective amounts named in each, from the moneys of the state treasury.²⁷

²³Sec. 1, Act of March 25, 1901, P. L. 59, amending the Act of June 12, 1878, P. L. 206.

²⁴Repayment of Collateral Inheritance Tax, 6 D. R. 654 (1897).

²⁵Sec. 1, Act of March 22, 1899, P. L. 20.

²⁶Sec. 1, Act of May 11, 1901, P. L. 173.

²⁷Sec. 2, Act of May 11, 1901, P. L. 173.

CHAPTER XLIX.

MERCANTILE LICENSE TAX.

§ 1113. History.

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- 1128. Foreign persons and corporations having no stores or warehouses in Pennsylvania, taking orders through agents by samples, which orders are filled from without the state, are not taxable.
- 1129. Liability of butchers to the tax.
- 1130. Appointment of mercantile appraisers.
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- 1132. Assessment of tax—Mercantile appraisers to furnish taxables with blank returns—to administer oaths to taxables—to assess tax when dissatisfied with returns and furnish taxables with statements of tax due and time and place of appeal.
- 1133. Penalty for failure of mercantile appraiser to furnish taxables with notices of taxes due by them.

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- 1139. Payment for advertising lists.
- 1140. Accounts for advertising mercantile appraisers' lists to be audited by auditor general.
- 1141. Payments not to be made for fictitious persons nor for names of persons not residing at places designated.
- 1142. Laws relating to publication of mercantile appraisers' lists to remain in force.
- 1143. Constables to report to county treasurer names of taxables omitted from mercantile appraisers' lists.
- 1144. Fees and mileage of mercantile appraisers.
- 1145. Fees of mercantile appraisers in Philadelphia.
- 1146. Compensation of county treasurers for issuing licenses.
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- 1151a. Suits for recovery of tax.
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- 1153. Taxables to place signs with the nature of their business and their names near entrances to their places of business.
- 1154. Repeal.

§ 1113. **History.** The mercantile license tax, as originally created by the Act of April 2, 1821, P. L. 244, was applicable only to dealers in foreign wares or merchandise, thus discriminating against such dealers in favor of dealers in domestic wares. It was a license tax, and not a tax on business, and dealers selling foreign goods without licenses were subject to prosecution.

The Act of March 4, 1824, P. L. 32, provided that foreign dealers having more than one store should take out a license for each store, and required the several city and county treasurers to publish lists of persons subject to license.

The above mentioned Act of 1821 provided that dealers in

goods sold by the importers in original packages need not be licensed. The Act of March 4, 1824, repealed this exception, which was, however, restored by the Act of April 7, 1830, P. L. 387, which provided:

"Provided, that nothing in this act shall be taken or construed so as to require the importer of foreign goods, disposing of the same in the form in which said goods are imported, to take out a license for vending the same."

The said Act of 1830 divided dealers subject to the license into eight classes, according to the amounts of their annual sales, beginning with sales of twenty-five hundred dollars or less and ending with fifty thousand dollars.

The same act provided that feme sole traders with sales not exceeding twenty-five hundred dollars per annum should not be required to take out a license.

The Act of May 4, 1841, P. L. 307, § 10, made all dealers, whether in domestic or foreign goods, subject to the tax, which, therefore, ceased to be a tax on dealers in foreign merchandise only, from and after that date.

The said Act of 1841 created additional classes of merchants for the imposition of the license, and provided that no person whose annual sales did not exceed one thousand dollars should be subject to license, nor feme sole traders with annual sales not exceeding twenty-five hundred dollars, nor importers of foreign goods disposing of the same in original packages, nor persons selling articles of their own manufacture or growth.

The appointment of mercantile appraisers was provided for by the 5th section of the Act of April 16, 1845, P. L. 533.¹

The 11th section of said act provided that persons keeping a store or warehouse for the sale of merchandise, where such persons are interested in the manufacture of such merchandise, should be taxable, "Provided, that mechanics, who keep a store or warehouse at their own shop or manufactory, for the purpose of vending their own manufactures exclusively, shall not be required to take out any license."

It is said that, under the Act of 1841, many dealers evaded the tax by taking out a small interest in some manufacturing enterprise, and then buying and selling a portion of its product, when their principal business was really the keeping of a store

¹See § 1118.

for the sale of general merchandise, and that the foregoing provision was intended to prevent such evasions.

This provision was construed by the Act of February 27, 1868, P. L. 43, *infra*.²

Various later acts, remaining in force, will be found in the following sections. So much of the earlier acts as relates to classification of dealers for the imposition of the tax, is repealed by the Act of May 2, 1899, and its supplements, which do away with the arbitrary and unscientific classifications theretofore existing, and impose the tax uniformly upon the basis of the amounts of sales, at different rates according as the dealers are retailers, wholesalers or dealers at exchanges and boards of trade.

§ 1114. Nature of the tax. The mercantile license tax is a tax on the business of merchants, as measured by their gross receipts derived from their sales, and is imposed under the general power of taxation and not under the police power.³

The Act of April 2, 1821, P. L. 244, provided that dealers should take out licenses, but, as a matter of fact, no licenses are now issued. Merchants are assessed for the tax, but are not required to take out a license before beginning business nor thereafter.

The tax is not a "state or county tax" within the meaning of § 4 of Article VIII of the Constitution, referring to the qualifications of electors.⁴

§ 1115. The tax is constitutional. The Act of May 2, 1899, P. L. 184, is constitutional, and is a general law within the meaning of § 1, Article IX, of the Constitution, although the mercantile appraisers who assess the mercantile tax are appointed differently in cities of the first class from those appointed in counties.⁵

§ 1116. Tax imposed on wholesale dealers in merchandise, retailers and dealers at exchanges or boards of trade. From and after the passage of this act, each retail vender

²See § 1130.

³*Com. v. Thomas Potter, Sons & Co.*, 159 Pa. 583 (1894); *Pittsburgh Brewers' & B. Supply Cos. Merc. Tax*, 38 Super. Ct. 121 (1909); *Knisely v. Cotterel*, 196 Pa. 614 (1906); *Com v. Bailey, Banks & Biddle Co.*, 20 Pa. Super.

Ct. 210 (1902). See *Com. v. Banker Bros. Co.*, 38 Pa. Super. Ct. 101 (1909).

⁴*Conway v. Carpenter*, 11 W. N. C. 169 (1881).

⁵*Knisely v. Cotterel*, 196 Pa. 614 (1900).

of or retail dealer in goods, wares and merchandise shall pay an annual mercantile license tax of two dollars, and all persons so engaged shall pay one mill additional on each dollar of the whole volume, gross, of business transacted annually. Each wholesale vendor or wholesale dealer in goods, wares and merchandise shall pay an annual mercantile license tax of three dollars, and all persons so engaged shall pay one-half mill additional on each dollar of the whole volume, gross, of business transacted annually. Each dealer in or vender of goods, wares or merchandise at any exchange or board of trade shall pay a mercantile license tax of twenty-five cents on each thousand dollars worth, gross, of goods so sold.⁶

§ 1117. Definition of "wholesalers" and "retailers."

And it is provided that all persons who shall sell to dealers in or venders of goods, wares and merchandise, and to no other person or persons, shall be taken under the provisions of this act to be wholesalers; and all other venders of or dealers in goods, wares and merchandise shall be retailers, and shall pay an annual license tax as provided in this act for retailers.⁷

The Act of May 2, 1899, imposes the tax on the same classes of persons, and no others, which were subject thereto under the provisions of prior acts.

"The terms, 'vendor of, or dealer in, goods, wares and merchandise' used in the first section of the Act of May 2, 1899, to designate the business subject to the tax, having been used in former statutes, and their meaning having been the subject of judicial inquiry and determination, they must be assumed to have been used in the sense in which they had been interpreted by the court of last resort, in the absence of anything in the statute requiring a different interpretation."⁸

"Where terms and modes of expression are employed in a new statute, which, at the time of its enactment, had acquired, by judicial construction, a definite meaning and application in a previous statute on the same subject, they are generally supposed to be used in the same sense, and in the construction of the later act regard should be had to the known and established interpre-

⁶Sec. 1, Act of May 2, 1899, P. L. 184.

⁷Com. v. Pocono Mountain Ice Co., 23 Pa. Super. Ct. 267 (1903).

⁸Sec. 2, Act of May 2, 1899, P. L. 184.

tation of such terms and modes of expression in the former: *Endlich on Interpretation of Statutes*, § 369. A plainer case than the present for the application of this principle can hardly be imagined."⁹

A "dealer" is not one who buys to keep or makes to sell but one who buys to sell again. This is the test to be used in applying the Act of May 2, 1899. Hence, a farmer is not a dealer as to what he sells of his own produce, but is as to what he buys from others to sell again,¹⁰ and persons who manufacture locomotives and sell them at their shop or manufactory are not taxable.¹¹

A dealer is one who buys and sells again. One who is engaged in butchering lamb, calves and sheep and dressing poultry at his slaughter house on a farm, having no store or warehouse and not selling at retail, but selling and shipping the same to city commission men and retailers, is not taxable.¹²

A company owning and operating a mine and regularly owning and selling a particular brand of powder to its employees exclusively, for use in its mines, usually at a profit, but sometimes for less than cost, is a dealer in merchandise and subject to the tax.¹³

A miller who purchased grain, ground it into flour and sold it, was held to be a dealer and subject to the tax,¹⁴ but this case was afterwards overruled.¹⁵

A person engaged in the purchase of hay, either baled or unbaled, which he sells baled to consumers, is a dealer, and liable to assessment in the county where he receives hay and stores and delivers it to common carriers for delivery to customers.¹⁶

A plumber, who buys pipes and fittings and fits them together in the shape of water and steam heating apparatus, who has no other place of business than his shop, from which alone he makes

⁹*Com. v. Bailey, Banks & Bid-
dle Co.*, 20 Pa. Super. Ct. 210
(1902).

¹⁰*Com. v. Davis*, 11 D. R. 427
(1902). See *Barton et al. v. Mor-
ris*, 10 Phila. 360 (1874).

¹¹*Norris Brothers v. Com.*, 27
Pa. 494 (1856).

¹²*Com. v. Brinton*, 14 Pa. C. C.
460 (1894); 3 D. R. 783.

¹³*Del. & Hud. Canal Co.'s
Case*, 8 Pa. C. C. 496 (1890).

¹⁴*Berks County v. Bertolet*, 13
Pa. 522 (1850).

¹⁵*Com. v. Campbell*, 33 Pa. 380
(1859).

¹⁶*Com. v. Robb*, 14 Pa. Super.
Ct. 597 (1900).

sales, and who charges only for his labor and cost of material, is not a dealer within the meaning of the act,¹⁷ nor is one who buys and sells live stock.¹⁸

A railroad company which mines coal and sells it from the cars on which it is shipped from the mine, to persons applying therefor, whether in large or small quantities, does not keep a store or warehouse for the sale of merchandise and is not taxable.¹⁹

Custom tailors who purchase cloth and trimmings, and make the same into clothes for their customers, are not taxable;²⁰ but it has been held that a paper hanger, who hangs paper taken from his own store, is subject to the tax.²¹

A baker, who sells part of his goods at a public market, has been held taxable.²²

One who carries on a business of selling goods, wares and merchandise, manufactured by him, at a store or warehouse, apart from his manufactory, is such a vendor or dealer as is liable to taxation upon the volume of the business done by him at such store or warehouse, while one who keeps a store or warehouse in his own shop or manufactory for the purpose of vending his own manufactures exclusively, is not.²³

It is not true as a general proposition that venders of or dealers in goods, wares and merchandise must necessarily mean those, and those only, who carry on the business of selling things previously purchased, in the same form and condition, and not in the form or condition to which they have been changed after passing through some process.²⁴

A brewers' supply company which sells malt, hops, isinglass, bottles and corks to brewers, bottlers and wholesale liquor dealers, who use these articles in carrying on their business, is, as to

¹⁷Com. v. Gormly, 173 Pa. 586 (1896); Allentown v. Bitterling, 3 Leh. 40.

¹⁸Com. v. Evans, 2 Chest. Co. 383.

¹⁹Com. v. Del. Lack & W. R. R. Co., 6 Pa. C. C. 121 (1888); Com. v. Campbell, 33 Pa. 380 (1859).

²⁰Com. v. Stiltz Bros., 5 D. R. 673 (1895).

²¹Com. v. Frank, 2 C. P. Rep. 27 (1883).

²²Meuschke's Appeal, 43 Pitts. L. J. 342 (1896).

²³Pittsburgh Brewers' and Bottlers' Supply Company's Mercantile Tax, 38 Pa. Super. Ct. 121 (1909).

²⁴Pittsburgh Brewers' and Bottlers' Supply Company's Mercantile Tax, 38 Pa. Super. Ct. 121 (1909).

such business, a wholesale vender within the meaning of the Act of May 2, 1899, P. L. 184.²⁵

§ 1117a. Exemptions from tax as affected by the Act of May 2, 1899, P. L. 184. Various acts in force prior to the passage of the Act of May 2, 1899, P. L. 184, exempted from liability to the tax feme sole traders or single women whose sales do not exceed twenty-five hundred dollars per annum,²⁶ dealers whose sales do not exceed one thousand dollars per annum,²⁷ importers of foreign goods selling the same in the original packages,²⁸ manufacturers selling their products only at their factories,²⁹ and manufacturers selling at their factories not more than five hundred dollars' worth of goods and wares manufactured by others.³⁰

It has been held that the exemption granted to manufacturers selling their own products at their factories was not repealed by the Act of May 2, 1899, but it seems to have been assumed that the provisions for other exemptions were repealed by the general language of § 1 of said act,³¹ but there seems no good reason for this assumption, and the courts have never so held. If the exemption of manufacturers selling at their factories is not repealed by the Act of 1899, it is difficult to see how it can be contended that the other exemptions above enumerated are repealed. The first section of the Act of 1899 seems to have been intended to establish a new basis for the imposition of the tax; not to impose the tax upon persons not previously subject thereto.³²

§ 1118. Manufacturers not maintaining stores or warehouses apart from their factories not taxable. . . . Mechanics who keep a store or warehouse at their own shop or manufactory, for the purpose of vending their own manufactures exclusively, shall not be required to take out any license.³³

The true intent and meaning of the eleventh section of an act,

²⁵Pittsburgh Brewers' and Bottlers' Supply Company's Mercantile Tax, 38 Pa. Super. Ct. 121 (1909).

²⁶See § 1120.

²⁷See § 1120.

²⁸See § 1120.

²⁹See § 1118.

³⁰See § 1121.

³¹New Mercantile Tax Law, 9 D. R. 117 (1900), op. Atty. Gen., Stewart's Pardon, p. 2519, § 6.

³²Com. v. Pocono Mountain Ice Co., 23 Pa. Super. Ct. 267 (1903); Com. v. Givin, 21 Pa. Super. Ct. 401 (1902).

³³Sec. 11, Act of April 22, 1846, P. L. 489.

entitled "An act to provide for the reduction of the public debt," approved April twenty-second, Anno Domini one thousand eight hundred and forty-six, is hereby declared to be, that a manufacturer or mechanic, not having a store or warehouse apart from his manufactory or workshop, for the purpose of vending goods, such manufacturer or mechanic shall not be classified or required to pay the annual tax and license as is now required in relation to foreign dealers, and that an affidavit before an alderman or justice of the peace, or any person authorized by law to administer an oath or affirmation, setting forth the fact that such manufacturer or mechanic has not a store or warehouse apart from his manufactory or workshop, shall be sufficient evidence for the appraiser of mercantile tax not to classify said manufacturer or mechanic: Provided, that any person swearing falsely in relation to any matter provided for in this act shall be deemed guilty of perjury, as if said oath had been taken in any legal proceeding.³⁴

Hereafter manufacturers and mechanics, who shall sell goods, wares or merchandise, other than their own manufacture . . . shall be classified in the same manner, and required to pay the same annual tax as is now required to be paid by dealers in foreign merchandise.³⁵

A manufacturer is not taxable unless he keep a store or warehouse away from his factory, for the sale of his product, and the fact that he sells his product, from his factory, to commission merchants in Philadelphia, who dispose of the same in that city, does not render him taxable.³⁶

A manufacturer who sells nothing but his own products, and these only at the place of manufacture, is not taxable.³⁷

A person who purchases hay, bales and sells the same, is not a manufacturer within the meaning of the foregoing provisions.³⁸

A tanner who purchases hides and converts them into leather is a manufacturer,³⁹ but a firm manufacturing leather in another state and selling the same in a store which it maintains in Pennsylvania, at which store the leather is cut into various forms and

³⁴Act of Feb. 27, 1868, P. L. 43.

Steel Co., 27 Pa. Super. Ct. 508 (1905).

³⁵Sec. 1, Act of April 9, 1870, P. L. 59.

³⁶Com. v. Robb, 14 Pa. Super.

³⁷Com. v. Campbell, 33 Pa. 380 (1859).

Ct. 597 (1900).

³⁸Com. v. Crum Lynne Iron &

³⁹Com. v. Campbell, 33 Pa. 380 (1859).

sizes, but not manufactured into any completed article, is not entitled to exemption.⁴⁰

A plumber who buys pipes and fittings and fits them together in the shape of a steam and water heater system, and has no other store or place at which he does business as a buyer or seller, and who gets paid by charges for his labor and cost of material, was held not to be a dealer within the meaning of the mercantile license tax act, presumably because he was thought to be a manufacturer.⁴¹

But under the Act of April 2, 1830, P. L. 147, § 2, relative to peddlers, it was held that a jeweler who assembled parts of watches and put them together, and peddled the watches from place to place, was not a manufacturer within the meaning of the exemption contained in said act.⁴²

For decisions as to what businesses are and are not held to be manufacturing within the meaning of the foregoing provision, see § 1117.

§ 1119. Dealers taxable who keep stores or warehouses for the sale of goods in the manufacture of which they are interested.⁴³ All dealers in goods, wares and merchandise, the growth, product and manufacture of the United States, and every person who shall keep a store or warehouse for the purpose of vending and disposing of goods, wares and merchandise, where such person is concerned or interested in the manufacture of such goods, wares and merchandise, shall be classified in the same manner, and required to pay the same annual tax and license fee as is provided and required in relation to foreign merchandise: Provided, that mechanics who keep a store or warehouse at their own shop or manufactory, for the purpose of vending their own manufactures exclusively, shall not be required to take out any license.⁴⁴

This provision is not repealed by the Act of May 2, 1899.⁴⁵

A manufacturer of cigars and smoking tobacco had a factory in Philadelphia, from which all his sales were made. He also

⁴⁰Com. v. Cover, 215 Pa. 556 (1906); 29 Pa. Super. Ct. 409.

⁴¹Com. v. Gormly, 173 Pa. 586 (1896).

⁴²Com. v. Percival, 11 Pa. Super. Ct. 608 (1899).

⁴³See § 1121.

⁴⁴Sec. 11, Act of April 22, 1846, P. L. 489.

⁴⁵Com. v. Vetterlein, 29 Pa. Super. Ct. 294 (1905).

had a cigar factory at Souderton, Montgomery County, the product of which was sold at his Philadelphia factory, or shipped directly to customers on orders sent from the Philadelphia factory. No books were kept or orders received at the Souderton factory. Held, that he was not taxable, under the foregoing provision.⁴⁶

§ 1120. Exemption of traders with certain annual sales, importers of foreign merchandise in original packages, and venders of their own products or manufactures.

. . . No person whose annual sales do not exceed one thousand dollars; and no feme sole trader or single woman whose annual sales do not exceed two thousand, five hundred dollars, venders of wines or distilled liquors excepted,⁴⁷ nor any importer of foreign goods, wares or merchandise, who may vend or dispose of the same in the original packages as imported, nor any person who may vend or dispose of articles of his own growth, produce or manufacture, shall be required to take out a license under this act.⁴⁸

The exemption of "importers" from tax, refers to importers of foreign merchandise through the ports of entry, and not to persons buying goods in other states.⁴⁹

So much of the above provision as relates to venders of their own manufactures must be read in connection with the Acts of 1846 and 1868, *supra*, § 1118.

It seems that the exemption of venders whose sales amount to less than one thousand dollars per annum is confined to venders of wines and liquors in connection with other articles:

"By the evidence before the court the amount of sales in this case does not exceed fifty dollars. If, therefore, the proviso applies to ordinary sales of merchandise the appellants are not taxable.

"Were it not for the ruling of the Supreme Court in the very imperfectly reported case of *Osborne v. Holmes*, 9 Barr 333, there might be grave doubts whether any license is necessary where the annual sales are less than \$1,000; nor am I sure that that case decides the contrary. The defendant in that case was a manufacturer of hats and caps, and also sold other articles of domestic manufacture, not manufactured by him or at his shop, to an amount less than \$1,000. The court below gave judgment against him. The case depended upon the construction of the proviso to the act of 1841 above recited. The Supreme

⁴⁶*Com. v. Vetterlein*, 29 Pa. Super. Ct. 294 (1905).

⁴⁷See § 425.

⁴⁸Sec. 10, Act of May 4, 1841, P. L. 311. See § 1117a.

⁴⁹*Com. v. H. C. Tombler Grocery Co.*, 6 D. R. (1896).

Court, in an opinion of less than three lines, affirmed the judgment on the opinion of the court below, but the reporter has not given us that opinion nor can it now be had. I have caused the records of the Supreme Court and the court below to be diligently searched for the opinion, but it appears to have been taken from the office and never returned.

"The case, however, would seem to be decisive of the first question raised in this case. I suppose the court must have held that the proviso referred only to vendors of wines and liquors in connection with other articles."⁵⁰

If the surmise of the court in the above opinion be correct, it would seem that dealers in liquors (who are not subject to the tax on their sales of liquors)⁵¹ whose sales of mineral waters, cigars, etc., do not amount to one thousand dollars per year, are not taxable.

§ 1121. Exemption of manufacturers selling merchandise manufactured by others of not more than five hundred dollars value per annum. Hereafter manufacturers and mechanics who shall sell goods, wares or merchandise, other than their own manufacture, not exceeding the sum or value of five hundred dollars per annum, shall not be classified or required to pay any annual tax or license fee; but if such sales shall exceed the sum or value of five hundred dollars per annum, as aforesaid, they shall be classified in the same manner and required to pay the same annual tax as is now required to be paid by dealers in foreign merchandise.⁵²

There seems to be no reason for believing that the above exemption is repealed by the general language of the second section of the Act of May 2, 1899.⁵³

"The Act of April 9, 1870, exempting from tax manufacturers and mechanics who sell goods other than of their own manufacture, not exceeding in value \$500 per annum, would seem to be a modification of the law as announced by the Supreme Court, in *Osborne v. Holmes*, so far as manufacturers and mechanics are concerned, but not as to other vendors."⁵⁴

§ 1122. Manufacturers and vendors of patent medicines subject to tax. Every individual or copartnership, who shall

⁵⁰*Delaware County v. E. J. Dupont de Nemours Co.*, 15 Phila. 627 (1881), per Clayton, J.

⁵¹See § 1125.

⁵²Act of April 9, 1870, P. L. 59.

⁵³See § 1117a.

⁵⁴*Delaware County v. E. I. Dupont de Nemours Co.*, 15 Phila. 627 (1881).

engage in the business of manufacturing or vending nostrums or patent medicines, of whatever class or character,* shall, for the purpose of taxation, be deemed and taken to be dealers in merchandise, and shall be classed and rated for a yearly license in the same manner, except as is hereinafter provided, as other dealers in merchandise are now by law classed and rated: Provided, that nothing herein contained shall be so construed as to exempt any manufacturer of nostrums or patent medicines from the payment of the proper license fee, or any part thereof, on the ground that he is selling goods of his own manufacture, from the place where the same were manufactured.⁵⁵

Druggists are taxable as venders of patent medicines.⁵⁶

§ 1123. Exemption from tax of farmers selling their own produce. . . . Farmers selling their own produce, or occupying a stall or stalls, or sidewalk or part thereof, in any of the markets of a city of the first class, shall not be subject to classification or taxation for mercantile purposes.⁵⁷

A farmer selling his own produce at a public market is not a vender of goods, wares and merchandise within the meaning of the acts imposing a tax upon such venders, and the fact that he sometimes accommodates a neighbor by selling his produce with his own, for a commission, is immaterial.⁵⁸ In a later case, however,⁵⁹ it was held that he is taxable as to sales of products of others purchased by him.

§ 1124. Dealers not taxable except in counties where they make sales. Dealers who purchase merchandise and store it in warehouses in a county, but make no sales in said county nor take orders therein, their sales office being in another county, where all orders are received, and filled by orders therefrom, are not subject to the tax in the county wherein such warehouses are located.⁶⁰

*Sec. 1, Act of June 5, 1883, P. L. 87. The second section of this act repeals the 25th and 26th sections of the Act of April 10, 1849, P. L. 575, dealing with the same subject.

⁵⁵Liability of Druggists to Mercantile Tax, Atty. Gen's Rep. 1895-96, 374 (1879). See Laffer's Appeal, 13 Phila. 499 (1877); Com. v. Fuller, 2 Walk. 550

(1864); Gross v. Com., 39 L. I. 61 (1880).

⁵⁷Sec. 5, Act of April 18, 1878, P. L. 28.

⁵⁸Barton et al. v. Morris et al., 1 W. N. C. 543 (1875); 10 Phila. 360.

⁵⁹Com. v. Davis, 11 D. R. 427 (1902).

⁶⁰Com. v. Teller, 144 Pa. 545 (1891).

§ 1125. **Dealers in alcoholic liquors not taxable.** Brewers, bottlers, distillers and other dealers in alcoholic liquors are not taxable as venders of merchandise, the liquor license Acts of May 13, 1887, P. L. 108, May 24, 1887, P. L. 194, and June 9, 1891, P. L. 257, having superseded the old system of mercantile appraisement as to such persons;⁶¹ nor are hotel keepers, whether keeping their hotels upon the American or European plan, subject to the tax.⁶² But liquor dealers who sell cigars and tobacco, mineral waters, etc., are taxable upon the amount of their sales of such goods.

§ 1126. **Social clubs not taxable on receipts from billiard and pool tables, sales of cigars, etc.** Social clubs maintaining restaurants, billiard and pool tables, bowling alleys, cigar stands, etc., and sleeping apartments, for the use of their members, are not subject to the payment of the tax.⁶³

§ 1127. **Corporations subject to the tax.** Corporations, whether foreign or domestic, engaged in the vending of merchandise, are subject to the tax the same as individuals, and the fact that a domestic corporation has paid bonus on charter, and annually pays a tax upon its capital stock, is immaterial.⁶⁴

A foreign manufacturing company having a place of business within the state, where it sells, either directly, or through its agents, its products manufactured in another state, is subject to the tax,⁶⁵ though it pays other taxes to the Commonwealth.⁶⁶

A foreign corporation which has its sole place of business in Pennsylvania, where all its goods are bought, sold and shipped, having an office in the state of its domicile only for the purpose of holding stockholders' meetings, is taxable, and it is immaterial that it buys merchandise in original packages to be shipped outside of Pennsylvania.⁶⁷

But foreign corporations doing business in Pennsylvania through

⁶¹Com. v. Iron City Brewing Co., 146 Pa. 642 (1891); 29 W. N. C. 213.

⁶²McClure v. Krumbholz & Riley, 9 D. R. 544 (1900).

⁶³Union League of Phila. v. Ransley et al., 35 Pa. C. C. 273 (1908).

⁶⁴Com. v. Bailey, Banks & Bid-

dle Co., 20 Pa. Super. Ct. 210 (1902).

⁶⁵Com. v. Swift & Co., 19 Pa. C. C. 572 (1897); 6 D. R. 664; Wyoming County Treasurer v. Stark, 12 D. R. 378 (1903).

⁶⁶Potter v. Warder, Bushnell & G. Co., 28 Pa. C. C. 183 (1903).

⁶⁷Com. v. H. C. Tombler Grocery Co., 6 D. R. 8 (1896).

agents, and having no warehouse in the state, or merely holding an exposition open for but a few weeks, are not taxable.⁶⁸

A manufacturing corporation does not subject itself to payment of the tax by maintaining a show room apart from its factory and corporate offices, though in the same city, where it exhibits its manufactures, selling none, but taking orders to be filled from its factory, where its sales are consummated. The Act of February 27, 1868, P. L. 43, expressly relieves such a company from the tax.⁶⁹

A foreign corporation manufacturing automobiles entered into a contract with a Pennsylvania corporation doing business in that state, by which the foreign company agreed to sell automobiles to the Pennsylvania company at a certain list price, delivery to be made as soon after orders were received as practicable, payment to be made in cash. The Pennsylvania company agreed not to sell any other kind of automobiles within a designated territory. Payments were to be made either in advance, or by paying drafts with bills of lading attached. The contracts could be terminated upon ten days' notice. There was nothing in the agreement which authorized the Pennsylvania company to bind the foreign company by any engagement with a third party. Held: (1) That the agreement was a contract for the sale of automobiles, and did not create between the parties the relation of principal and agent; (2) that upon the payment of sight drafts the automobiles became the absolute exclusive property in Pennsylvania of the purchasing company; and (3) that the Pennsylvania company was a retail vendor of automobiles, and as such subject to the mercantile tax imposed by the Act of May 2, 1899, P. L. 184.⁷⁰

§ 1128. Foreign persons and corporations having no stores or warehouses in Pennsylvania, taking orders through agents by samples, which orders are filled from without the state, are not taxable. A foreign corporation which has no office, warehouse, factory or store in Pennsylvania, which makes sales to residents of the state through travelling salesmen, taking orders from samples, which orders are trans-

⁶⁸Exposition of National Carriage Dealers Assn., 12 D. R. 10 (1902).

⁶⁹Com. v. Gillinder & Sons, 12

D. R. 635 (1903); 29 Pa. C. C. 165.

⁷⁰Commonwealth v. Banker Bros. Co., 38 Pa. Super. Ct. 101 (1909).

mitted to the office of the company without the state, are not taxable, and, if taxed, may treat the assessment as a nullity, and defend a suit brought for the tax, although no appeal has been taken.⁷¹

§ 1129. Liability of butchers to the tax.

"The testimony taken at the hearing of these cases shows that among the persons whose appeals are now before us, there are those who carry on the business of butchers in one or other of the following ways:

"1. Those who sell either at their slaughter houses, at stalls in the public markets or from wagons, only the meat of animals slaughtered by themselves, or in addition less than \$500 worth of meat not slaughtered by themselves, but purchased from others. These are clearly not liable to the tax. This was decided by the Supreme Court in *Commonwealth v. Dinkleberg*, 2 Chest. Co. Rep. 384, and is conceded by the Commonwealth. They are manufacturers, selling their own produce and not dealers within the meaning of these acts: *State v. Yearly*, 82 N. C. 561; *Commonwealth v. Thomas Potter & Sons*, 159 Pa. 583, and cases therein cited.

"2. Those who sell either at their slaughter house, at stalls in the public markets or from wagons, the meat of animals slaughtered by themselves, and also more than \$500 worth of meat not of their own manufacture, but purchased from others, in the carcass or part of carcass, and not made into sausages and like products, but simply cut up and sold in smaller pieces. These are taxed by the express terms of the Act of April 9, 1870, which enacts that those who sell goods, wares or merchandise, other than their own manufacture, exceeding the value of \$500, shall be taxed.

"3. Those who do not slaughter, but buy carcasses and parts of carcasses and sell the meat thus purchased, after cutting it up into such sizes as to enable them to sell it at retail, either in their shops or in the public markets.

"These are subject to the tax. They are not manufacturers, but dealers, and come clearly within the definition given by Justice Black in *Norris Bros. v. Commonwealth*, 27 Pa. 494: 'A dealer in the popular and therefore within the statutory sense of the word is not one who buys to keep or makes to sell, but one who buys to sell again.' They buy at wholesale and sell at retail, as does the merchant who buys by the bale and sells by the yard.

"4. Those who slaughter the animals whose meat they sell, but sell it at a store or shop separate from their slaughter house.

"These are clearly subject to the tax under § 11 of the Act of 1846, and § 1 of the Act of 1868, declaring the true intent and meaning of the former act, because they have a store or warehouse apart from their manufactory or workshop, for the vending of goods.

⁷¹*Com. v. American Tobacco Co.*, 173 Pa. 531 (1896).

"5. Those who buy cattle or other animals, and, not having a slaughter house of their own, slaughter them at some other place and sell the product at their shop or in the public markets.

"These are taxable for the reasons stated in the preceding paragraph. The place of sale is not their manufactory or workshop.

"6. Those who, having a slaughter house and shop on the same premises, where they sell the products of animals slaughtered by themselves, sell also at the same place more than \$500 worth of meat bought in the carcass from others, but manufacture so much of it into sausage and such like products that the amount sold without being manufactured is less than \$500.

"These come within the exception of those 'who sell goods, wares and merchandise other than their own manufacture, not exceeding the sum or value of \$500 per annum,' and they are therefore not liable to the tax."⁷²

One who is engaged in butchering lambs, calves and sheep and dressing poultry at his slaughter house on a farm, having no store or warehouse, and not selling at retail, but selling and shipping his meat and poultry to commission men and retailers, is not taxable,⁷³ and butchers selling meat slaughtered by themselves, in their own slaughter houses, from wagons or stalls of public markets are not taxable,⁷⁴ but butchers selling meat slaughtered by others are subject to the tax.⁷⁵

§ 1130. Appointment of mercantile appraisers. For the purpose of carrying into effect the provisions of this act, the appointment of mercantile appraisers shall be made annually, on or before the thirtieth day of December of each year, by the county commissioners, except in cities of the first class, when the auditor general and the treasurer of the city are authorized and required to appoint five suitable, qualified citizens, all of whom shall not be of the same political party, and the term of office of said appraisers shall be for three years.⁷⁶

The appointment of mercantile appraisers was first provided for by § 5 of the Act of April 16, 1845, P. L. 533, which provided that such officers should be appointed in the counties of Philadelphia and Allegheny, by the courts of common pleas of said counties, respectively.

⁷²Com. v. Hiller, 1 Dauph. Co. Rep. 188 (1898).

⁷³Com. v. Brinton, 14 Pa. C. C. 460 (1894).

⁷⁴Givler's Appeal, 12 W. N. C. 236 (1882).

⁷⁵Com. v. Bickings, 3 Kulp 346 (1884); 2 Chest. Co. 386.

⁷⁶Sec. 3, Act of May 2, 1899, P. L. 184.

The 12th section of the Act of April, 22, 1846, P. L. 489, extended the provisions of the Act of 1845 to all other counties within the state, but provided for the appointment of appraisers by the county commissioners in said other counties, and the 13th section of said act provided for the appointment of two additional appraisers in Philadelphia, by the court of common pleas.

The Act of March 15, 1847, P. L. 496, provided that the appraiser in Allegheny County should be appointed by the county commissioners.

The Act of April 18, 1878, P. L. 27, provided by its second section for the appointment of five appraisers in Philadelphia by the recorder of that city and the city treasurer, but this provision was repealed by the Act of April 19, 1883, P. L. 9.

The 3rd section of the Act of April 20, 1887, P. L. 60, provided for the appointment of appraisers in the same manner as is provided by the foregoing 3rd section of the Act of May 2, 1899.

The said 3rd section of the Act of April 20, 1887, repealed the local Act of March 30, 1867, P. L. 630, relative to the appointment of a mercantile appraiser by the councils of the city of •Scranton.⁷⁷

Where a vacancy occurs in the board of mercantile appraisers in Philadelphia, the power to fill the same is in the authority making the original appointment, and the term to be filled is the unexpired portion of the unexpired term.⁷⁸

§ 1131. Auditor general to furnish blank returns to be distributed to taxables. The auditor general shall be authorized and required to prepare and have printed proper blanks, to be distributed by the mercantile appraisers in the several counties to each vender of or dealer in goods, wares and merchandise. These blanks shall be in the form prescribed by the auditor general, and shall contain a request for such information as may be necessary in arriving at the actual amount of business transacted by the vender of or dealer in goods, wares and merchandise, during the calendar year preceding that for which a license is required. The blanks thus prepared shall contain an affidavit; and every dealer subject to the provisions of this act shall be required to make an affidavit, by oath or affirmation, as to the correctness of

⁷⁷Jadwin v. Hurley, 10 Pa. Super. Ct. 104 (1899).

⁷⁸Phila. Mercantile Appraisers, 1 D. R. 64 (1892).

the return made. The whole volume of business, including cash receipts and merchandise sold on credit, which is thus ascertained has been transacted during the preceding calendar year, shall be the basis upon which the license is to be rated.⁷⁹

§ 1132. Assessment of tax—Mercantile appraisers to furnish taxables with blank returns—To administer oaths to taxables—To assess tax when dissatisfied with returns, and furnish taxables with statements of tax due and time and place of appeal. It shall be the duty of each mercantile appraiser, appointed under the provisions of this act, to forward by mail, at least ten days prior to the date when he makes a personal visit to the place of business of every person whom he is required by law to ascertain and assess, a blank prepared for distribution by the auditor general as hereinbefore provided. It shall be the further duty of the mercantile appraisers, after mailing the blank as hereinbefore provided, in the several cities and counties of this state, personally to visit the store, or other place of business, of every vender of or dealer in goods, wares and merchandise, and, at the time of such visit, to require each vendor or dealer to make a return, under oath or affirmation, of the goods sold for the preceding calendar year, on the blank forwarded and he is hereby empowered to administer an oath or affirmation, for that purpose. If the mercantile appraiser is dissatisfied with the return, so made by the vender or dealer, he shall ascertain and assess the mercantile license tax according to the classification so made. He shall also leave a written or printed notice, to be prepared and furnished by the auditor general, specifying the classification and amount of license money to be paid by such person to this state, and also the time and place, when and where, an appeal will be held as required by law. . . .⁸⁰

Prior to the passage of the Act of May 2, 1899, persons engaging in the business of vending merchandise after the annual assessment of the tax, were required to take out licenses covering the time between the date they began business and the date of assessment for the ensuing year, under the provisions of the Acts of March 4, 1824, 8 SM. L. 201, and April 7, 1830, § 6, P. L. 390. As licenses are no longer issued, and as merchants report the

⁷⁹Sec. 4, Act of May 2, 1899,
P. L. 184.

⁸⁰Sec. 6, Act of May 2, 1899,
P. L. 184.

amount of their sales for the preceding year, it is, of course, immaterial when they begin business, and said acts are evidently a dead letter.

§ 1133. Penalty for failure of mercantile appraiser to furnish taxables with notice of taxes due by them.

Any mercantile appraiser who shall neglect or refuse to visit the store, or other place of business, of any person ascertained and assessed by him for license, and to furnish such person with a written or printed notice of his classification, amount of license, and time and place of holding appeal, as required by the fifth section of this act, shall pay a penalty of one hundred dollars, for the use of the Commonwealth, to be recovered as debts of a like amount are recoverable, on due proof of such neglect or refusal being made according to law.⁸¹

§ 1134. County treasurers to assess tax against taxables refusing to make returns—Appeals from such assessments. It shall be the duty of each vender of or dealer in goods, wares and merchandise to fill up the blank prepared, as before said, by the auditor general, and return the same to the mercantile appraiser of the proper county within ten days from the date of the receipt thereof, with an affidavit certifying to the correctness of the return so made. If any vender of or dealer in goods, wares and merchandise refuses to make a return, as required by this act, to the mercantile appraiser, when requested so to do, it shall be the duty of the mercantile appraiser to report the same immediately to the county treasurer, whereupon it shall be the duty of the county treasurer to require the owner or business manager to appear before him in person, with the books and accounts of his mercantile establishment, for interrogation and examination; and the county treasurer shall have power to issue subpoenas and attachments, to be served by any constable or sheriff, and to compel the attendance of the owner, or any clerk, bookkeeper or officer connected with said business, to produce such books and papers as he may deem expedient, to secure the information necessary to ascertain and fix the amount of business transacted during the calendar year preceding that for which a mercantile license tax is to be paid. After the county treasurer has ascertained, from the best evidence that can be secured, the amount or volume of business transacted during the calendar year

⁸¹Sec. 8, Act of May 2, 1899, P. L. 184.

preceding that to which the license is to be issued, he shall settle an account, in the usual mode, against the owner or owners of such establishments, for the amount of mercantile tax due under the classification hereinbefore provided. If the owner, proprietor, or any other person connected with the business, who is subpoenaed, refuses to produce the books and papers and appear before the county treasurer, for the purpose of giving the information required by this act of Assembly, he shall be liable to a penalty of one thousand dollars, to be collected in the manner provided by law. The county treasurer shall settle an account against the owner or owners, so neglecting or refusing to make the report as aforesaid, and a certified copy of said settlement shall be forwarded to the vender of or dealer in goods, wares or merchandise, which settlement, when so made, shall be subject to appeal for thirty days from the date thereof, and, if not appealed from within that time, it shall be final and conclusive. If an appeal is not taken as hereinbefore provided, within the period authorized by law, it shall be the duty of the county treasurer of the proper county to proceed to collect the amount due, as mercantile taxes are in other cases collected.⁸²

The certified copies of settlements evidently take the place of the notices required to be given by the 12th section of the Act of April 22, 1846, P. L. 489, and § 1 of the Act of April 18, 1855, P. L. 244.

§ 1135. Appeals from assessments of tax. . . . The appeal shall be held by the county treasurer, acting in conjunction with the mercantile appraiser, at such date as shall conform with law in all counties, except where there is a board of mercantile appraisers, in which case the board shall hear all appeals. Any vender or dealer, subject to the provisions of this act, who is dissatisfied with the rating so made by the mercantile appraiser, shall have the right of appeal to the mercantile appraiser and county treasurer, who are required to hear him on the day so fixed for the appeal; if the vender or dealer is still dissatisfied with the finding of the county treasurer and mercantile appraiser, or board of appraisers, in reference to the proper classification of said vender or dealer, he shall have the right of appeal to the court of common pleas of the proper county, which appeal the said court is required to hear and determine within twenty

⁸²Sec. 5, Act of May 2, 1899, P. L. 184.

days after such appeal shall be taken, or at the next sitting thereof. If any person fails to attend the appeal before the county treasurer and mercantile appraiser, board of appraisers, or the court, he shall not thereafter be permitted, in a suit for the recovery of said mercantile license tax, to set up as a defence, either that he is not a vender of or dealer in goods, wares or merchandise, or any other ground of defence, which might have been heard and determined either by said county treasurer and mercantile appraiser, board of appraisers, or the court of common pleas, on appeal, as aforesaid.⁸³

It shall be the duty of the appraisers of mercantile taxes in the city of Philadelphia, on the days succeeding the first publication of the list of persons assessed as liable to the payment of licenses, and for thirty days thereafter, to sit as a board of appeal, to whom and within which time, all appeals may be taken for any wrongful or erroneous assessment. . . .⁸⁴

A court of common pleas will not enjoin the collection of tax where the party assessed therewith has failed to appeal to the board of appraisers.⁸⁵

The mercantile license tax not being a tax on property, no appeal from the action of the courts of common pleas, on appeal from the mercantile appraiser and county treasurer, lies to the Supreme Court under the provisions of the Act of June 26, 1901, P. L. 601, but the Superior Court may review proceedings in such cases when brought upon certiorari.⁸⁶

§ 1136. Appeals to be taken when—Taxables not appealing not permitted to make certain defences in suits for tax. Any person so ascertained and assessed, who shall fail to attend such appeal from the decision of the appraiser to the proper court of common pleas, within ten days thereafter, . . .⁸⁷

⁸³Sec. 6, Act of May 2, 1899, P. L. 186.

⁸⁴Sec. 2, Act of April 13, 1866, P. L. 104. The omitted portion of this act provided that the action of the board on appeal should be final, but it was held in the unreported case of *Simpson v. Cain*, Phila. C. P. 1853, that such portion did not take away the right of appeal to

court given by the Act of March 4, 1824.

⁸⁵*Crist et al. v. Morris et al.*, 2 W. N. C. 620 (1876); 11 Phila. 357.

⁸⁶*Pgh. Brewers' & B. Supply Cos. Merc. Tax*, 38 Pa. Super. Ct. 121 (1909). See § 151.

⁸⁷The omitted portion is reenacted in § 6 of the Act of May 2, 1899, *supra*.

or having so appealed and the court having determined the same, shall not be permitted to set up as a defence to the recovery of the amount of the license, which he is required to pay, when suit shall be brought for the recovery of the same, either that he is not a dealer in or retailer of merchandise, or a distiller, brewer or other party required to be ascertained and assessed for license by the mercantile appraiser, or any other ground of defence which might have been heard and determined, either by said mercantile appraiser or the court of common pleas, on appeal, as aforesaid.⁸⁸

The foregoing provision, requiring appeals to be taken within ten days after assessment, is not repealed by the Act of May 2, 1899, P. L. 184, which affirms the right of appeal, but is silent as to the limitation of time.⁸⁹

It seems that where a person is assessed for tax, who is not subject to the tax at all, he may treat the same as a nullity and defend a suit brought for the tax, although no appeal was taken from the assessment.⁹⁰

In an action to recover mercantile tax assessed against a taxable, the plaintiff may not object that the taxable did not take his appeal to the mercantile appraisers of Philadelphia within the statutory time, where the objection is not raised until after the plaintiff has filed a statement of claim, and taken a rule for judgment for want of a sufficient affidavit of defence.⁹¹

§ 1137. Mercantile appraisers to certify to county treasurers lists of taxables. It shall be the duty of every mercantile appraiser, appointed under this act, on or before the first day of May, in each year, to certify to the county treasurer a correct list of all venders or dealers in goods, wares and merchandise, assessed or to be assessed with a mercantile tax in the county for which he is appointed, giving the names and postoffice addresses of the venders or dealers so returned, the classification, and amount of license due by each. The list furnished by the mercantile appraiser to the county treasurer shall not contain the name or names of venders or dealers who are not subject to

⁸⁸Sec. 1, Act of April 11, 1862, P. L. 492.

⁸⁹Com. v. Vetterlein, 21 Pa. Super. Ct. 587 (1902).

⁹⁰Com. v. American Tobacco Co., 173 Pa. 531 (1876). *Contra*:

Lamon v. Paxton, 2 Luz. L. R. 259 (1873).

⁹¹Com. v. Crum Lynne Iron & Steel Co., 27 Pa. Super. Ct. 508 (1905).

the payment of the mercantile license tax. This list shall be kept by the county treasurer, for his guidance in hearing appeals and collecting said license taxes. After appeals have been heard and exonerations made, the corrected list shall then be certified by the county treasurer to the auditor general, on or before the first day of July, of each year.⁹²

§ 1138. **Publication of mercantile appraisers' lists.** The county commissioners of the respective counties are hereby authorized and required to publish the mercantile appraiser's list of names and classification of each person subject to license, in three papers of general circulation in each county of the Commonwealth, one of which shall represent the minority party of the two principal parties of the county, and one of which may be a German or Welsh paper. Provided, however, that such list shall not be published in more than two papers in any county, should the county commissioners desire to limit such publication to that number: And provided further, that the auditor general and city treasurer shall direct that said list and classification shall be published in four newspapers in cities of the first class.⁹³

It seems that there was no authority for the publication of the mercantile appraisers' lists in Philadelphia prior to the passage of the Act of April 18, 1878, P. L. 27, nor from 1883, when said Act of 1878 was repealed, until the passage of the Act of April 20, 1887, although such advertisement was in fact made from 1862, nor in Allegheny County, prior to the passage of the Act of April 20, 1887.⁹⁴

Advertisement of the lists may not be made in Sunday newspapers, nor in papers dated and purporting to be issued on that day,⁹⁵ nor in a mere advertising sheet.⁹⁶

The publication of the list in Philadelphia county in a German newspaper is discretionary with the auditor general and city treasurer,⁹⁷ who have authority to publish the list, not the commissioners of Philadelphia county.⁹⁸

The constables in Philadelphia have no status to secure an

⁹²Sec. 9, Act of May 2, 1899, P. L. 184.

⁹³Sec. 1, Act of April 20, 1887, P. L. 60.

⁹⁴Mayer v. McCamant, 8 Pa. C. 75 (1890); Joos v. McCandless, 1 Pa. S. C. Dig. 282.

⁹⁵Joos v. McCandless, 1 Pa. S. C. Dig. 282.

⁹⁶Tyler v. Bowen, 1 Pitts. 225.

⁹⁷Mayer v. McCamant, 8 Pa. C. 75 (1890).

⁹⁸Bartley et al. v. Patton, 19 Phila. 496 (1889).

order on the attorney general to compel the auditor general and city treasurer to publish the list, because such constables are entitled to a fee of fifty cents for each name omitted from the list and reported by them.⁹⁹

It seems that it is not necessary in the publication of the list to designate the amount of tax due by each dealer.¹⁰⁰

§ 1139. Payment for advertising lists. The auditor general is hereby authorized and empowered to pay the respective newspapers, for the publication of said mercantile appraiser's list, the usual rates of advertising charged by the same to private customers, and not exceeding thirty cents per line for four insertions: Provided, that in no case shall the amount paid for advertising in any city or county exceed ten per centum of the amount received by the treasury of the state from said city or county during the preceding year from the class of taxes so advertised; and all bills shall be certified to the county treasurers of the respective counties by the appraiser; and the county treasurers are hereby authorized to pay the same, upon said bills being receipted by the respective publishers in proper form, and upon approval by the auditor general they shall be entitled to receive credit for the amount so paid in the settlement of their accounts for licenses with the Commonwealth.¹

§ 1140. Accounts for advertising mercantile appraisers' lists to be audited by auditor general. . . . The accounts for advertising mercantile lists and all other state accounts shall be audited by the auditor general.²

§ 1141. Payments not to be made for fictitious persons, nor for names or persons not residing at places designated. There shall be no pay for advertising nor fee to any appraiser for fictitious names or the names of persons not residing at the place designated.³

§ 1142. Laws relating to publication of mercantile appraisers' lists to remain in force. All acts or parts of acts now in force in reference to the publication of mercantile, liquor

⁹⁹Baugh et al. v. Elkin, 9 D. R. 577 (1900); 24 Pa. C. C. 203.

¹Sec. 3, Act of April 20, 1887, P. L. 60.

¹⁰⁰New Mercantile Tax Law, 9 D. R. 117 (1900).

²Sec. 4, Act of April 20, 1878, P. L. 60.

³Sec. 2, Act of April 20, 1887, P. L. 60.

and other license taxes, except as hereinbefore provided, shall continue to be and remain in full force and virtue.⁴

§ 1143. Constables to report to county treasurers names of taxables omitted from mercantile appraisers' lists. . . . After such publication of advertisement shall have been made [i. e., publication of mercantile appraisers' lists] it shall be the duty of the constable of his respective ward, district or township to compare the list and to report to the county or city treasurer all omissions found, and for such service the constable shall receive a fee of fifty cents for each and every omission so reported.⁵

The foregoing provision gives constables authority to make assessments against dealers omitted from the mercantile appraisers' lists.⁶

§ 1144. Fees and mileage of mercantile appraisers. The fees of the appraisers of mercantile taxes for each certificate of license issued shall be fifty cents, instead of thirty-seven and one-half cents, as now provided by law; and the said mercantile appraisers shall also be allowed six per cents per mile circular for all necessary travel, in the manner now provided by law, in lieu of three cents per mile heretofore provided; and all laws inconsistent herewith are hereby repealed: Provided, that this act shall not apply to the city of Philadelphia and county of Allegheny.⁷

No mercantile appraiser shall be allowed any pay for mileage by the auditor general, unless he shall make oath or affirmation that he has actually travelled in the performance of his duties as mercantile appraiser, the number of miles charged by him, and personally visited the place of business of every person ascertained and assessed by him.⁸

Whether the fees of mercantile appraisers should be paid by the county or city treasurer to the state treasurer, and by him to the appraiser, or directly by the city or county treasurer to the appraiser, not decided.⁹

⁴Sec. 5, Act of April 20, 1887, P. L. 60.

⁵Sec. 10, Act of May 2, 1899, P. L. 188.

⁶Potter v. Warder, Bushnell & G. Co., 28 Pa. C. C. 183 (1903); Wyoming County Treasurer v. Stark, 12 D. R. 378 (1903).

⁷Sec. 1, Act of Feb. 27, 1865, P. L. 4. The fee was fixed at 37½ cents by § 12, Act of April 22, 1846, P. L. 489.

⁸Sec. 3, Act of April 11, 1862, P. L. 492.

⁹Com. v. Durkin, 109 Pa. 138 (1885).

County and city treasurers are not entitled to the amounts collected as appraisers' fees for their own use.¹⁰

§ 1145. **Fees of mercantile appraisers in Philadelphia.** . . . The said appraisers of mercantile taxes shall receive, for the classification of each person, in lieu of the compensation now fixed by law, the sum of sixty-two and one-half cents, and the city treasurer shall be entitled to fifty cents for issuing each license.¹¹

§ 1146. **Compensation of county treasurers for issuing licenses.**¹² The respective county treasurers shall be entitled to demand and receive from each person to whom they shall deliver a license as aforesaid the additional sum of twenty-five cents as a compensation for his services in making out, registering and delivering such license.¹³

In Philadelphia the city treasurer receives fifty cents for each person licensed. See § 1145, *supra*.

In counties having more than one hundred and fifty thousand inhabitants, the above-mentioned fee belongs to the county and may not be retained by the county treasurer.¹⁴

§ 1147. **Commissions of county treasurers for collection of tax.** The said county treasurers respectively . . . shall settle their accounts with the auditor general, and pay over to the state treasurer all moneys received by them from dealers in foreign merchandise, in pursuance of this act, deducting therefrom a commission similar to what is now allowed from the payment of moneys arising from the tavern licenses, and such settlement, and all the remedies and duties in relation thereto, shall be regulated by the provisions of the third section of the act of twelfth of March, one thousand eight hundred and twenty-five, entitled "An act more effectually to secure the collection of the revenue from tavern licenses and for other purposes."¹⁵

¹⁰*Allegheny County v. Collingwood*, 31 Pa. C. C. 431 (1905); *Luzerne County v. Kirkendall*, 209 Pa. 116 (1904).

¹¹Sec. 2, Act of April 13, 1866, P. L. 104. The Act of May 24, 1861, P. L. 1126, provided for a similar fee for assessing liquor dealers, who are no longer rated for mercantile license tax. See § 1125.

¹²As elsewhere stated, licenses are no longer issued.

¹³Sec. 9, Act of April 7, 1830, P. L. 391.

¹⁴*Allegheny County v. Collingwood*, 31 Pa. C. C. 431 (1905); *Luzerne County v. Kirkendall*, 209 Pa. 116 (1904).

¹⁵Sec. 9, Act of April 7, 1830, P. L. 389.

In collecting and paying the various state license taxes, the county treasurers act as the agents of the state, and not as the agents of their respective counties,¹⁶ and such treasurers, in counties having more than one hundred and fifty thousand inhabitants, are entitled, equally with treasurers of counties having a less population, to retain for their own use the commissions for the collection and payment of such taxes.¹⁷

In the case of the treasurer of Philadelphia county, however, it is provided by the Act of June 6, 1893, P. L. 340, that all fees and commissions receivable or collectible by him for collecting or receiving revenues of the Commonwealth are repealed and abolished. The said act, however, refers to "the treasurer of any county, co-extensive in boundary with a city of the first class," and would, therefore, seem to be void as local and special legislation.¹⁸

By the 33rd and 34th sections of the Act of April 15, 1834, P. L. 542, county treasurers are required to give two bonds, one to the county, conditioned for a just account of all moneys that may come into their hands on behalf of the county, and the other for the faithful discharge of all duties enjoined by law upon them on behalf of the Commonwealth, and for the payment of all moneys received by them for the use of the state. Where a city treasurer, charged with the duty of collecting the mercantile license tax, under the provisions of a special law, gives two bonds, under the above-mentioned provisions, the sureties on the bond given to the city are not liable for appraiser's fees received by him and not turned over.¹⁹

§ 1148. Fees, mileage and commissions to remain as fixed by existing law. The rate of commission allowed county or city treasurers,²⁰ the fees collected for the county or city treasurers and mercantile appraisers, also the rate per mile paid mercantile appraisers, and all provisions of law referring to the

¹⁶Com. v. Durkin, 109 Pa. 138 (1885); Com. v. Phila. County, 157 Pa. 531 (1893). See Luzerne County v. Kirkendall, 209 Pa. 116 (1904).

¹⁷Phila. v. McMichael, 208 Pa. 297 (1904).

¹⁸Com. v. McMichael, 8 D. R. 157 (1899). *Contra*, Phila. v. McMichael, 12 D. R. 403 (1903). See Blankenburg v. Black, 200 Pa. 629 (1901).

¹⁹Com. v. Durkin, 109 Pa. 138 (1885).

²⁰See § 1148a.

advertising of said lists, shall be and remain the same as now fixed by existing law. . . .²¹

§ 1148a. Tax now collected in all counties by county treasurers. Prior to the passage of the Act of May 2, 1899, P. L. 184, the mercantile license tax was collected in the cities of Scranton and Carbondale by the treasurers of said cities, respectively, under the provisions of special acts. It was also collected in the cities of Allegheny and Pittsburgh by the treasurers of those cities, respectively, under the provisions of no legislation directly authorizing the same, but probably under a construction of the Act of April 2, 1821, P. L. 24.

As to the collection of the tax in the city of Philadelphia, in an early case it was held, before the consolidation Act of Feb. 2, 1841, P. L. 21, that the treasurer of the city of Philadelphia was the proper person to grant licenses.^{21a} Since the consolidation there is but one office of city and county treasurer and said office is a county and not a city office.²²

While the Act of 1899 sometimes uses the term "city treasurer" in conjunction with the term "county treasurer," it has been uniformly held by the accounting officers that, under the provisions of the said act, the tax on mercantile licenses is collectible by county treasurers in all cases, and not by any city treasurers, and it is so collected.

§ 1149. Collection of tax. The appraisers so appointed shall furnish to the treasurer of the proper . . . county, a certified list of the dealers aforesaid, with the classification as made out by them or determined by the judges of the court on appeal, as aforesaid; and the said treasurer shall, within twenty days thereafter, transmit to the auditor general a copy of such list, and shall receive and collect, together with the fees of the appraiser and his own fee, the sums to be paid by such dealers for their licenses, in the manner directed by law.²³

All moneys due or becoming due to the Commonwealth for taxes or license shall be made to the treasurer of the proper

²¹Sec. 10, Act of May 2, 1899, P. L. 188.

^{21a}Com. v. Bacon, 8 S. & R. 135.

²²Com. v. Oellers, 140 Pa. 457 (1891).

²³Sec. 8, Act of April 16, 1845, P. L. 532.

county, who shall make return to the state treasurer, as heretofore provided by law.²⁴

It shall be the duty of every . . . county treasurer to sue for the recovery of all licenses, duly returned by the mercantile appraiser, if not paid on or before the first day of July in each and every year, within thirty days after that date: Provided, however, that if the county treasurer is satisfied that the mercantile license tax, for any good and sufficient reason cannot be collected, he shall make a report to the auditor general of all the facts connected with the case, and the auditor general, upon investigation, may exonerate him from the payment of said tax, and in all such cases suit shall not be brought. The county treasurer shall, at the expiration of each month, forward to the state treasurer the amount of mercantile tax received by him.²⁵

It shall be the duty of the auditor general to charge the treasurers of the said cities²⁶ or counties with the amount payable by the several persons mentioned in said lists; from the payment of which the said treasurers shall be exonerated only by producing satisfactory evidence to the accounting department that the person or persons so returned were not wholesale dealers and retailers of foreign merchandise . . . according to the true intent and meaning of this act, or that it was impracticable to collect and recover the same.²⁷

§ 1150. Collection of tax in Philadelphia. . . . At the expiration of thirty days after said list shall have been finally adjusted and placed in the hands of the city treasurer, the said treasurer shall appoint such a number of persons as he may elect (not exceeding six), for the honest and faithful discharge of whose duties he shall be liable, to whom he shall deliver his warrant, with duplicate, containing the names of all such persons whose licenses are unpaid, authorizing and requiring them to demand and receive from every person or persons in such duplicate named the sum wherewith such person or persons stand charged, together with ten per cent. additional, which per centum shall be retained by the collectors as their compensation for services rendered. . . .²⁸

²⁴Sec. 11, Act of May 11, 1853, P. L. 673.

²⁵Sec. 1, Act of June 14, 1901, P. L. 565, amending § 7 of the Act of May 2, 1899, P. L. 184.

²⁶See § 1148a.

²⁷Sec. 7, Act of April 7, 1830, P. L. 390.

²⁸Sec. 2, Act of April 13, 1866, P. L. 104.

The penalty of ten per cent. is not recoverable on an appeal from an assessment of the tax. Until the appeal is disposed of, the penalty is not incurred.²⁹

§ 1151. **Distraint for unpaid taxes in Philadelphia.** If any person or firm shall neglect or refuse to make payment of the amount due by him, her or them for such licenses, within thirty days from the time of demand so made, it shall be the duty of the persons aforesaid to levy such amount by distress and sale of goods and chattels of such delinquent, giving five days' public notice of such sale, by written or printed advertisement, proceeding in such manner and receiving therefor such compensation as is now allowed to collectors of taxes for similar services.³⁰

§ 1151a. **Suits for recovery of tax.** Instead of proceeding against delinquents by indictment, in the manner directed by the act to which this is a supplement, it shall be the duty of the proper county treasurer to institute a suit before any alderman or justice of the peace, in the name of the Commonwealth . . . against each delinquent retailer as aforesaid, for the amount of duty payable agreeably to law, adding thereto [five] per cent. as a further compensation to the treasurer for his trouble in suing for and recovering the same; and upon judgment being obtained or entered against any person or persons neglecting or refusing to pay the amount of said duty, execution shall issue for the amount thereof, with the addition of the said [five] per cent., together with costs of suit, after the expiration of twenty days, unless the person or persons, believing him, her or themselves to have been aggrieved by the decision of the said alderman or justice, shall appeal, within the said term of twenty days after the rendering of said judgment, to the court of common pleas of the proper county; which said appeal shall be made and conducted in the same manner, and be subject to the same provisions in every particular, as other appeals in cases of other debts of like amount recoverable before an alderman or justice of the peace: Provided, that the person or persons so intending to appeal shall first declare on oath or affirmation in writing, to be filed by said alderman or justice of the peace, that he, she or they verily believe injustice has been done them, and that said appeal

²⁹Com. v. Thomas Potter, Sons
& Co., 159 Pa. 583 (1894).

³⁰Sec. 3, Act of April 13, 1866,
P. L. 104.

is not made for the purpose of delay; and it shall be the duty of the attorney general or his deputy residing in the said city or county, to prosecute such appeal to judgment, for which he shall receive the sum of three dollars and no more: And provided, that in all cases of appeals the jury or arbitrators trying the case shall decide whether the party appealing or the Commonwealth shall pay the costs of suit; and when the decision is against the Commonwealth, the costs shall be paid out of the county treasury; but in no case shall the Commonwealth pay costs, except where the party appealing is not a retailer of foreign merchandise, or has not produced any other testimony on the appeal than what was produced before the alderman or justice of the peace before whom the cause was originally tried: And provided further, where the justice of the peace or alderman shall decide against the Commonwealth, the costs of suit shall be paid out of the county treasury.³¹

All costs of collection are now paid out of the state treasury.³²

In Philadelphia suits are now brought before a magistrate.³³

The foregoing act was amended by the 8th section of the Act of April 7, 1830, P. L. 390, so as to make the additional sum recoverable by the county treasurer five per cent.

All licenses returned by the mercantile appraisers to the city or county treasurer, shall be sued for and recovered by action of debt, before a justice of the peace, with right of appeal, as provided by the first section of this act: Provided, that a civil suit for the recovery of the amount of the license shall not be a bar to or interfere with any proceeding by indictment, where such proceeding is now authorized by law, but the remedies by civil action and indictment shall be cumulative.³⁴

It shall be the duty of every city and county treasurer to sue for the recovery of all licenses duly returned to him by the mercantile appraisers, if not paid on or before the first day of July in each and every year, within ten days after that date; and said treasurer shall not be discharged from any such license, unless he brings suit to recover the same within said date, and press the same to judgment and execution as soon thereafter as practicable, and pays the amount of all such licenses received by

³¹Sec. 2, Act of March 4, 1824,
P. L. 39.

³²See § 1151b.

³³Albrecht v. Lane, 14 Phila.
91 (1880).

³⁴Sec. 4, Act of April 11, 1862,
P. L. 492. See § 1136.

him into the state treasury, on or before the first day of October ensuing; nor shall he receive any commissions on such licenses, unless he makes payment as aforesaid.³⁵

§ 1151b. Cost of collecting tax to be paid out of state treasury. . . . So much of any law as requires the payment from county treasuries of the cost of collecting mercantile taxes be and the same is hereby repealed; and such costs shall be paid out of the state treasury, on the warrants of the auditor general. . . .³⁶

§ 1152. Exemption from municipal license taxes of persons taking orders by sample from dealers for persons paying the tax. From and after the passage of this act, it shall be unlawful for any city, borough or municipality, to levy any license or mercantile tax upon persons taking orders for merchandise by sample, from dealers, for individuals or companies who pay a license or mercantile tax, at their chief place of business. It shall also be unlawful for any city, borough or municipality to collect such license or mercantile tax hereafter levied by virtue of any ordinance of any city, borough or municipality: Provided, that nothing in this act shall authorize such person to sell by retail, to others than dealers or merchants.³⁷

§ 1153. Taxables to place signs with the nature of their business and their names near entrances to their places of business. Each dealer who comes under the provisions of this act shall cause to be placed, permanently, at the entrance of his or their place of business, a sign describing the business in which the party is engaged, with his or their name or names upon the same, such sign; and a violation of the provisions of this section shall be punishable with a fine of ten dollars, said fine to be collected as fines of like amount are now by the law collected, and to be paid into the county treasury.³⁸

§ 1154. Repeal. All acts or parts of acts, general, special or local, inconsistent herewith be and the same are hereby repealed.³⁹

The foregoing provision did not stop proceedings for the collection of tax already begun at the time of its passage, under the provisions of prior laws.⁴⁰

³⁵Sec. 5, Act of April 11, 1862,
P. L. 492.

³⁶Act of March 13, 1847, P. L.
340.

³⁷Act of May 17, 1883, P. L. 31.

³⁸Sec. 11, Act of May 2, 1899,
P. L. 184.

³⁹Sec. 12, Act of May 2, 1899,
P. L. 184.

⁴⁰Com. v. Robb, 14 Pa. Super.
Ct. 597 (1900).

CHAPTER L.

BROKERS' LICENSES.

§ 1155. History.

1156. Imposition of the tax.

1157. Definition of the various classes of brokers.

1158. Brokers to make sworn returns—Penalty for making false returns.

1159. Appraisers to impose maximum tax on brokers failing to make returns.

1160. Assessment of tax—Basis thereof—Appraiser may estimate assessments when dissatisfied with returns.

1161. Appeals from assessments.

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1163. Penalties.

1164. Lists of assessed persons to be certified to auditor general.

1165. Licenses to be taken out for each place of business.

1166. County treasurers' commissions.

1167. Abolition of other license taxes on brokers.

1168. Repeal of inconsistent laws.

§ 1155. **History.** The first section of the Act of May 27, 1841, P. L. 396, required persons engaged in the business of a stock broker to pay for the use of the Commonwealth, in Philadelphia the sum of one hundred dollars, in Pittsburgh and Allegheny County the sum of fifty dollars, and in other counties of the Commonwealth thirty dollars for a "commission" or license, which the treasurer of the proper company was authorized to issue to them. The second section of said act made a similar provision relative to persons engaged in the business of an exchange broker, and the third section provided similarly as to persons engaged in the business of bill brokers. The fourth section provided that such commissions or licenses should be renewed annually.

The 18th section of the Act of April 10, 1849, P. L. 573, extended the provisions of the Act of May 27, 1841, to merchandise and real estate brokers.

The 7th section of the Act of May 15, 1850, P. L. 773, provided that "hereafter all stock brokers, bill brokers, exchange-

brokers, merchandise brokers and real estate brokers . . . shall be required to pay annually to the use of the Commonwealth for their respective commissions or licenses . . . upon their annual receipts from commissions, discounts, abatements, allowances, or other similar means in the transaction of their business, three per centum."

The eighth section of the Act of 1850, provided that such brokers should be rated by the mercantile appraisers of the several counties according to the amount of business done by them, respectively.

The Act of June 7, 1901 amended the seventh section of the Act of May 15, 1850, so as to leave only merchandise and real estate brokers subject to the payment of the tax. The Act of April 14, 1905, amended the Act of June 7, 1901, by making firms or corporations engaged in the business of merchandise or real estate brokers taxable, as well as individuals engaged in such business.

The various provisions imposing a license tax upon brokers are superseded by the provisions of the Act of May 7, 1907, P. L. 175, which are given in the following sections.

The 11th section of the said Act of May 7, 1907, provides that the tax imposed by said act shall be in lieu of all license tax heretofore required to be paid by brokers, including the one per cent. tax upon their gross receipts which tax was originally imposed upon brokers of all kinds and private bankers by the Act of May 16, 1861, P. L. 708, and was modified by the Acts of June 7, 1895, P. L. 396, and June 13, 1901, P. L. 560.

The said Act of June 13 1901, however, still remains in force as to private bankers and imposes a tax of one per centum upon their gross receipts. This tax is treated of elsewhere. See §§ 901 to 906.

§ 1156. Imposition of tax. From and after the passage of this act, all brokers, whether stock brokers, bill brokers, note brokers, exchange brokers, merchandise brokers, factors or commission merchants, real estate brokers and agents, or pawnbrokers, whether persons, firms, limited partnerships, or corporations, shall pay an annual license tax to this Commonwealth upon his, their, or its gross annual receipts from commissions and other earnings, in the transaction of his, their, or its business, as follows; namely: Ten dollars by those whose gross annual receipts are less than

five thousand dollars; twenty-five dollars by those whose gross annual receipts are five thousand dollars, or in excess thereof and less than ten thousand dollars; fifty dollars by those whose gross annual receipts are ten thousand dollars, or in excess thereof and less than twenty thousand dollars; one hundred dollars by those whose gross annual receipts are twenty thousand dollars and upwards.¹

It will be noticed that this act recurs to the unscientific and illogical method of classification in existence, in the case of mercantile licenses, prior to the passage of the Act of May 2, 1899, by which act tax is assessed uniformly upon dealers in merchandise according to the amount of their sales.

The foregoing provision makes corporations engaged in the brokerage business taxable. Prior to the passage of the Act of April 14, 1905, P. L. 161, they were not subject to the payment of this tax.²

§ 1157. Definition of the various classes of brokers.

Every person, firm, limited partnership, or corporation, whose business or occupation, or one of whose businesses or occupations, is set forth in one of the following clauses, shall, for the purpose of this act, be considered as being engaged in the business or occupation designated in the said clause:

a. Stock brokers are those who, whether members or not members of a stock exchange, buy or sell, for a commission or other compensation, stock, bonds, debentures, scrip, certificates of indebtedness or other obligations of any person, firm, association, limited partnership, corporation, municipality or government, or investment or other securities of any character whatsoever.

b. Bill and note brokers are those who buy and sell promissory notes, or advance money on mercantile accounts.

c. Exchange brokers are those who buy or sell inland or foreign bills of exchange.

d. Merchandise brokers are those who, for a commission or other compensation, make contracts of sale or purchase of personal property for others.

e. Factors or commission merchants are those who receive con-

¹Sec. 1, Act of May 7, 1907, P. L. 175. Ct. 431; Com. v. Real Estate Trust Co., 26 Pa. Super. Ct. 149

²Com. v. Samuel W. Black Co., (1904). 223 Pa. 74 (1909); 34 Pa. Super.

signments of personal property, to be sold for a commission or other compensation.

f. Real estate brokers and agents are those who buy, sell, or rent real estate, or collect rent therefrom, or negotiate loans upon real estate security, for a commission or other compensation.

g. Pawnbrokers are those engaged in the business of receiving property in pledge, as a security for money or other thing advanced to the pawner or pledger.³

Factors are put on the same basis, by the provisions of the foregoing act, as merchandise brokers. Under the Act of April 10, 1849, they were held taxable as venders of merchandise, and not as merchandise brokers.⁴

It would seem that if merchandise brokers or factors or commission merchants deal in or vend goods, wares or merchandise at any exchange or board of trade, they are subject to the mercantile license tax under the provisions of § 1 of the Act of May 2, 1899, P. L. 184,⁵ and are not taxable under the Act of May 7, 1907.⁶

An occasional sale did not make the negotiator thereof a broker, within the meaning of the Act of April 10, 1849, P. L. 573.⁷

§ 1158. Brokers to make sworn returns—Penalty for making false returns. The auditor general shall prepare and have printed proper blanks, to be distributed by the mercantile appraisers in every county to said brokers, agents, and factors, as aforesaid. Said blanks shall require such information as may be necessary in arriving at the gross annual receipts from commissions and other earnings by the said brokers, agents, and factors, during the calendar year preceding that for which a license is required. Every broker, agent, or factor subject to the provisions of this act shall be required to make oath or affirmation as to the correctness of the return so made. For a false oath made by any person to such return, the one so falsely swearing shall be guilty of the crime of perjury, and shall, upon conviction, be subject to the punishment provided by law for such offence.⁸

³Sec. 2, Act of May 7, 1907, P. L. 175.

⁴Hunter's Appeal, 16 W. N. C. 478 (1885).

⁵See § 1116.

⁶Construction of Act of May 2, 1899, 9 D. R. 166 (1900).

⁷Chadwick v. Collins, 26 Pa. 138 (1856); Yedinskey v. Strouse, 6 Pa. Super. Ct. 587 (1898).

⁸Sec. 3, Act of May 7, 1907, P. L. 175.

§ 1159. Appraisers to impose maximum tax on brokers failing to make returns. It shall be the duty of each broker, agent, and factor to fill up the blank, prepared as aforesaid by the auditor general, and return the same to the mercantile appraiser of the proper county within ten days of the receipt thereof, with an affidavit certifying to the correctness of the return so made. If any broker, agent, or factor fails or refuses to make a return as required by this act to the mercantile appraiser, when requested so to do, it shall be the duty of the mercantile appraiser to assess him or it with the maximum license tax provided for by this act. A certified copy of said assessment shall be forwarded to the said broker, agent, or factor, which assessment when so made shall be final and conclusive, and without appeal; and the said broker, agent, or factor, so assessed, shall not be permitted, in any action brought to recover said assessment, to deny the correctness thereof.⁹

§ 1160. Assessment of tax—Basis thereof—Appraiser may estimate assessments when dissatisfied with returns. The mercantile appraiser or his duly authorized deputy shall visit the store, office or other place of business of every broker, agent, and factor, and, at the time of such visit, require each broker, agent, and factor to make a return, under oath or affirmation, of his, their, or its gross annual receipts from commissions or other earnings in the transaction of his, their, or its business during the preceding calendar year; and the appraiser, or any deputy appointed by him, is hereby empowered to administer an oath or affirmation for that purpose. The basis of assessment shall be the gross receipts and earnings during the previous calendar year; except where no business was transacted by said broker, agent, or factor during said previous year, when he, they, or it shall be liable for the minimum license tax of ten dollars. If the mercantile appraiser is dissatisfied with the return so made by the said broker, agent, or factor, he shall ascertain and assess the said license tax according to such sum as, in his best judgment, he believes to be correct. He shall also leave a written or printed notice, to be prepared and furnished by the auditor general, specifying the amount of the license money to be paid

⁹Sec. 4, Act of May 7, 1907, P. L. 175.

by such person to the Commonwealth, and also when and where an appeal will be held as required by law. . . .¹⁰

§ 1161. **Appeals from assessments.** . . . Any broker, agent, or factor who is dissatisfied with the assessment so made shall have the right of appeal to the mercantile appraiser and county treasurer in all counties, except where there is a board of mercantile appraisers, in which case the board shall hear all appeals. If the broker, agent, or factor is still dissatisfied with the finding of the mercantile appraiser and county treasurer, or board of appraisers, he, they, or it shall have the right of appeal to the court of common pleas of the proper county, within ten days; which appeal shall set forth the date and amount of such assessment, the date of the decision of the appeal board, and the facts in detail relied upon to obtain a reversal of said decision. The appellant shall, within five days after taking said appeal, serve upon the county treasurer and the mercantile appraiser, or board of appraisers, copies of his said appeal, including the court, term, and number of the case in which the appeal is taken. Upon failure to comply with any of the provisions of this section, in whole or in part, said appeal shall, upon motion, be stricken off. The burden of proof upon such appeal shall be upon the appellant. If any person fails to attend the said appeal before the mercantile appraiser and county treasurer, or board of mercantile appraisers, or the court, he shall not thereafter be permitted, in a suit for the recovery of said license tax, to set up a defense either that he is not a broker, agent, or factor, or any other ground of defense which might have been heard and determined either by said mercantile appraiser and county treasurer, board of appraisers, or the court of common pleas, on appeal, as aforesaid.¹¹

§ 1162. **Collection of tax.** It shall be the duty of every county treasurer to sue for the recovery of all licenses, duly returned to him by the mercantile appraiser, if not paid on or before the first day of July in each and every year, within thirty days after that date: Provided, however, that if said county treasurer is satisfied that said license tax cannot be collected, he shall make a report to the auditor general of all the facts connected with the case, and the auditor general, upon investigation,

¹⁰Sec. 5, Act of May 7, 1907,
P. L. 175.

¹¹Sec. 5, Act of May 7, 1907,
P. L. 175.

may exonerate him from the payment of said tax, and in all such cases suit shall not be brought.¹²

§ 1163. Penalties. If for any reason the tax, as aforesaid, is not paid on or before the first day of July in each year, a penalty of ten per centum of the amount of said tax shall be added and collected by the county treasurer, as aforesaid. Where suit is brought for the recovery of any such license tax, the said broker, agent, or factor shall be liable for, and it shall be the duty of the county treasurer to collect in addition to the license tax assessed against such broker, a penalty of fifty per centum of the amount of said license tax, so assessed. The county treasurer shall, at the expiration of each month, forward to the state treasurer the amount of said license tax received by him, including said penalties, as aforesaid.¹³

§ 1164. Lists of assessed persons to be certified to auditor general. It shall be the duty of every mercantile appraiser, or board of mercantile appraisers in the counties where such board exists, on or before the first day of May in each year, to certify to the county treasurer a correct list of all persons assessed, giving the names and business addresses of the brokers, agents, and factors so returned, and the amount of license due by each. This list shall be kept by the county treasurer in collecting said license-taxes. After appeals have been heard, and exonerations have been made, the corrected list shall be certified by the county treasurer to the auditor general on or before the first day of January in each and every year, in the case of counties having a board of mercantile appraisers, and on or before the first day of July in each and every year in the case of all other counties.¹⁴

§ 1165. Licenses to be taken out for each place of business. Every broker having more than one place of business shall take out a license for each and every such separate place of business.¹⁵

§ 1166. County treasurers' commissions. The rate of commission allowed county treasurers for their services in col-

¹²Sec. 6, Act of May 7, 1907,
P. L. 175.

¹³Sec. 7, Act of May 7, 1907,
P. L. 175.

¹⁴Act of May 1, 1909, P. L. 297,
amending § 8, Act of May 7,
1907, P. L. 175.

¹⁵Sec. 9, Act of May 7, 1907,
P. L. 175.

lecting license-taxes as aforesaid, shall be the same as in the case of mercantile licenses. In addition to the license-tax, as aforesaid, each broker shall be required to pay to the county treasurer a fee of one dollar, and to the mercantile appraiser a fee of seventy-five cents.¹⁶

§ 1167. Abolition of other license taxes on brokers. The license tax herein provided for shall be in lieu of all license taxes heretofore required by law to be paid, for the use of the Commonwealth, by said brokers, including a tax of one per centum upon the gross receipts of stock brokers, bill brokers, exchange brokers, and merchandise brokers, imposed by the first section of the act of the thirteenth day of June, Anno Domini nineteen hundred and one.¹⁷

§ 1168. Repeal of inconsistent laws. All acts or portions of acts inconsistent herewith be and the same are hereby repealed, except as to pending cases and assessments made thereunder.¹⁸

¹⁶Sec. 10, Act of May 7, 1907,
P. L. 175.

¹⁷Sec. 12, Act of May 7, 1907,
P. L. 175.

¹⁸Sec. 11, Act of May 7, 1907,
P. L. 175. See §§ 901-906.

CHAPTER LI.

THEATRE LICENSES.

§ 1169. History.

1170. Imposition of the tax.

1171. Yearly circus and menagerie licenses good throughout the state.

1172. Licenses to be granted by county treasurers—Penalty for maintaining theatres, etc., without payment of license.

1173. Licenses to be in lieu of all other state licenses on theatre, etc., buildings, or troupes performing thereat.

1174. Payment of state license not to exempt theatres or troupes from the payment of city or borough license taxes.

§ 1169. **History.** The second section of the Act of April 16, 1845, P. L. 532, provided "that no theatrical exhibition or exhibitions of circus performances or menageries, shall hereafter be allowed in this Commonwealth without a license from the state." The rates were two hundred dollars for Philadelphia county, one hundred dollars for Allegheny county and fifty dollars for any other county. It was further provided that the payment of said license tax should not exempt from the payment of city or borough taxes. A license for any county authorized exhibitions in other counties for one year, except that before a license obtained outside of Philadelphia or Allegheny counties could be utilized in either of said counties, the payment of such additional sum was required as would make the entire amount paid equal to the license tax in said counties, respectively.

The twenty-fourth section of the Act of April 10, 1849, P. L. 570, provided that "hereafter the price of a theatrical or circus license in the city or county of Philadelphia shall be five hundred dollars, and in the county of Allegheny two hundred dollars, and for every other county eighty dollars."

The Act of May 15, 1850, P. L. 772, reduced the license in counties other than Philadelphia and Allegheny counties to fifty dollars, and took away the privilege of exhibiting in any other county than the county in which a license was issued, which had been granted by the Act of April 16, 1845. The language of

section five of said Act of May 15, 1850, was changed so as not to impose the license tax on theatrical or other *exhibitions* as theretofore, but on theatres, museums or other *places* of theatrical representation.

Under the provisions of said Act of 1850, it was held that the word "place" in the said act authorized the taxation of buildings in which theatrical representations were given in Philadelphia and Allegheny counties,¹ while in other counties the tax was not on the place or building but on the company or exhibitors.

The Act of June 24, 1895, P. L. 249, as amended by the Act of May 23, 1907, P. L. 219, under which the tax is now collected, specifically provides that the tax shall be on the buildings in which the exhibitions are given and not upon the troupes performing therein.²

§ 1170. Imposition of the tax. From and after the passage of this act, the owner or owners, or lessee or lessees, according to agreement between said owner or owners and lessee or lessees, of a building or buildings, the whole or part of which are fitted up and used for theatrical or operatic entertainments, or for the exhibition of museums, shall pay to the use of the Commonwealth an annual license at the following rates; namely, In cities of the first class, five hundred dollars: Provided, that where the capacity of such building or buildings is less than four hundred persons, the license fee shall be thirty dollars; in cities of the second class, four hundred dollars; in cities of the third class, seventy-five dollars, and in all boroughs and townships thirty dollars. For circuses and menageries the price of a license shall be the same as hereinbefore required to be paid by the owners of buildings used for theatrical and operatic performances, or the exhibition of museums, when exhibited in a building, the license to be paid by the owner or owners of said building; when the exhibition shall be given in a tent, or

¹Hayes v. Coatesville Opera House, 139 Pa. 636 (1891). See Com. v. Reifsnnyder, 14 Pa. C. C. 353 (1894); Bell v. Mann, 121 Pa. 225 (1888); Com. v. Keeler, 3 D. R. 158 (1893); Green v. Kousins, 3 D. R. 302 (1894).

²For an examination of the various acts relative to the licensing of theatres, see Oellers v. Ritter, 5 D. R. 149 (1896); also op. of ct. below in Oellers v. Horn, 3 Pa. Super. Ct. 537 (1897).

enclosure of like character, the license to be paid by the proprietor or proprietors of the circus or menagerie. . . . ³

The intent of the foregoing act is to impose a license fee upon places where plays are given by professional players, who play for pay, where the exhibitions are given for personal profit, and not to impose such a fee upon a building where theatrical performances are given by amateurs, who are mere volunteers, even though there may be profits from such exhibitions devoted to other than charitable purposes, but not to the personal profit of such volunteers.⁴

§ 1171. Yearly circus and menagerie licenses good throughout the state. . . . Any person, being the proprietor of a circus or menagerie, which shall exhibit in a tent or enclosure of like character, desiring a license for the exhibition of the said circus or menagerie for the whole state for one year, shall be entitled to receive the same upon the payment of one thousand dollars, to be paid to the treasurer of any county in the state to the use of the Commonwealth, and the provisions of this act hereinbefore contained shall not be held to apply to such circus or menagerie paying such license for the whole state. . . . ⁵

§ 1172. Licenses to be granted by county treasurers—Penalty for maintaining theatres, etc., without payment of license. . . . The licenses hereinbefore provided for shall be granted by the treasurer of the proper county upon receiving the price of the same, the payment whereof shall entitle the person or persons paying the same to the use of the privileges conferred by this act. If any owner or owners or lessee or lessees of a building or buildings, the whole or part of which are fitted up and used for theatrical or operatic entertainments or for the exhibition of museums, or the owner or owners of a building or buildings in which a circus or menagerie may be exhibited, or the proprietor or proprietors of a circus or menagerie exhibiting in a tent or enclosure of like character, shall hold or allow to be held in such building or buildings, tent or enclosure any theatrical or operatic entertainment, or the exhi-

³Sec. 1, Act of May 23, 1907, P. L. 219, amending § 1, Act of June 24, 1895, P. L. 249.

⁴Oellers v. Horn, 3 Pa. Super.

Ct. 537 (1897); 39 W. N. C. 559.

⁵Sec. 1, Act of May 23, 1907, P. L. 219, amending § 1, Act of June 24, 1895, P. L. 249.

bition of any museum, menagerie or circus within any city, borough or township in this Commonwealth, without first having had and obtained a license as aforesaid, he or they so offending shall be liable to indictment, and upon conviction thereof shall pay for each such offense a fine of not less than one hundred dollars nor greater than five hundred dollars, at the discretion of the court trying said offense; all such fines to be paid into the treasury of the county wherein such conviction shall take place.⁶

Licenses run for one year from the date on which the fee therefor is paid. Under the Acts of June 25, 1895, and May 23, 1907, the owner and the lessee of a building used for theatrical or operatic exhibitions may settle between them by contract which one of them shall pay the license fee, and the State will be bound by the agreement.⁷

Under a license the licensee may not give performances at more than one place.⁸

§ 1173. Licenses to be in lieu of all other state licenses on theatre, etc., buildings or troupes performing thereat. The licenses hereinbefore provided for shall be in lieu of all licenses hereinbefore required by law to be paid for the use of the Commonwealth by the owners of buildings or other places in which theatrical, operatic or circus performances are held, or museums or menageries are exhibited, or by any theatrical, operatic, circus, menagerie or museum company or troupe or by the manager or managers, proprietor or proprietors thereof.⁹

§ 1174. Payment of state license not to exempt theatres or troupes from the payment of city or borough license taxes. The provisions of this act shall not exempt any theatrical or operatic company, or circus, or menagerie, or museum from the payment of such taxes as may be imposed upon them by any city or borough in this Commonwealth in accordance with any ordinance duly enacted in relation thereto.¹⁰

⁶Sec. 1, Act of May 23, 1907, P. L. 219, amending § 1, Act of June 24, 1895, P. L. 249.

⁷Gaudy et al. v. Oellers, 39 W. N. C. 438 (1897).

⁸Nurdlinger v. Irvine, 18 W.

N. C. 65 (1886).

⁹Sec. 2, Act of June 24, 1895, P. L. 249.

¹⁰Sec. 3, Act of June 24, 1895, P. L. 249.

CHAPTER LII.

AUCTIONEERS' LICENSES.

§ 1175. Auctioneers' licenses.

§ 1175. Auctioneers' licenses. From and after the first day of May next, auctioneers shall be rated with merchandise brokers, and in lieu of all commissions heretofore directed to be paid by them, shall pay, in the same manner as brokers, a license tax similar to that paid by said brokers, and no other: Provided, that no auctioneer's license shall be issued for the city and county of Philadelphia for a less sum than five hundred dollars, and all former laws or parts of laws at variance with this act, or prescribing other forms, shall be and are hereby repealed.¹

At the date of the passage of the foregoing Act of 1873, merchandise brokers paid a license tax under the provisions of § 7 of the Act of May 15, 1850, P. L. 773, which provided as follows:

Hereafter all stock brokers, bill brokers, exchange brokers, merchandise brokers, and real estate brokers in each and every city and county of this Commonwealth for their respective commissions or licenses, granted in pursuance of the several acts of Assembly now in force relating to the same, upon their annual receipts from commissions, discounts, abatements, allowances or other similar means in the transaction of their business, three per centum.

This act was variously amended by subsequent laws, and merchandise brokers are now taxable under the provisions of the Act of May 7, 1907, P. L. 175.²

It is held by the auditor general's department, however, that auctioneers are now taxable in the same manner and rate as merchandise brokers were taxable under the provisions of the Act of 1850, namely, at three per centum upon the amount of

¹Act of June 26, 1873, P. L.

²See § 1157.

their annual receipts from commissions, etc., and not as such brokers are now taxable under the provisions of said Act of 1907.

Auctioneers are assessed for the payment of license under the provisions of § 8 of said Act of May 15, 1850, P. L. 772, which is as follows:

The appraisers of mercantile taxes appointed under the fifth section of the act of the sixteenth day of April, one thousand eight hundred and forty-five, entitled "An act to increase the revenues and diminish the legislative expenses of the Commonwealth," be and they are hereby authorized and required to ascertain and assess the several brokers aforesaid, according to the amount of business done by them respectively, in the same manner as is required of them with regard to venders of merchandise; and the said several brokers shall be entitled to the same proceedings, on an allegation that they are not properly taxed, as are now provided by the seventh section of the said last-recited act in the case of venders of merchandise.³

The 7th section of the Act of April 16, 1845, P. L. 534, referred to in the foregoing provision, is as follows:

Upon the request of any person or firm who may allege that he is not properly assessed, it shall be the duty of the appraiser to administer an oath or affirmation, and interrogate him as to the amount of his sales for the previous year, and if the appraiser shall be satisfied upon such investigation that such person or firm is not properly assessed, he shall increase or reduce the assessment, as the case may be; and in all cases the person or firm so assessed if they are dissatisfied with the decision of the appraiser, shall have the right of appeal to the judges of the court of common pleas of the proper county, who shall in such case finally determine the same.⁴

Since the passage of the Act of June 26, 1873, P. L. 1874, p. 332, auctioneers receive their licenses from the county treasurer.⁵

". . . The meaning of the Legislature is, that for the purpose of ascertaining what sum a person is to pay in order to be qualified

³Sec. 8, Act of May 15, 1850, (1879); Com. v. Crall, 2 Pa. C. P. L. 772. C. 240 (1884); Com. v. Masten,

⁴Sec. 7, Act of April 16, 1845, 4 Pa. C. C. 439 (1887); Com. v. P. L. 534. Kutz, 6 D. R. 571 (1897).

⁵Com. v. Cotton, 14 Phila. 667

as an auctioneer that privilege is to be estimated, valued, assessed, 'with,' i. e., as upon the same footing with, that of merchandise brokers. Having so declared, the statute goes on to say that such person shall pay a license tax similar to that paid by said brokers, and in the same manner in which they pay the same, and no other. In other words, the price for the privilege of engaging in the business of auctioneering shall be the payment of a sum to be ascertained by treating the occupant as a merchandise broker and requiring him to pay the same that is exacted from such a one, which sum is to be paid by the auctioneer in the same way as if he were a merchandise broker. And that sum, the statute says at the outstart, shall be 'in lieu of all commissions heretofore directed to be paid' by auctioneers. . . . In short the meaning of the language used is that the payment required by this enactment for the right to engage in the business of auctioneering is to take the place of the payment previously required for the same right. . . . The effect of the repealing clause, therefore, must be to supersede such parts of all previous legislation (of course including local: *Com. v. Cotton*, 14 Phila. 667; *Com. v. Crall*, 2 Pa. C. G. 240; *Com. v. Masten*, 4 Pa. C. C. 439), as in the matter of the amount and the manner of payment exacted from persons for the privilege of engaging in the auctioneering business may be found to be at variance with its affirmative provisions."^a

^a*Com. v. Kutz*, 6 D. R. 571 (1897).

CHAPTER LIII.

BILLIARD, BOWLING ALLEY, ETC., LICENSES.

§ 1176. History.

1177. Rates of license tax.

1178. Definition of "billiard room," etc.

1179. Mercantile appraisers to assess tax—Appeals from assessments.

1180. Mercantile appraisers to certify lists of persons assessed.

1181. Collection of tax.

1182. Other license taxes for state purposes abolished.

1183. Repeal of certain local acts.

§ 1176. **History.** Section 19 of the Act of April 10, 1849, P. L. 573, provided that no person should keep any billiard room, bowling saloon or tenpin alley, without taking out a license from the county treasurer and paying therefor in Philadelphia city and county, and in other cities of the Commonwealth, one hundred dollars, and in other counties thirty dollars. The said section did not provide that the license fees collected under its provisions should be paid to the Commonwealth, but as the entire act relates to state revenues, it is evident that they were so paid.

The 2nd section of the Act of May 15, 1850, P. L. 772, changed the rate payable for the license.

Special acts provided for the payment of billiard, etc., licenses at special rates in Philadelphia, Lancaster and Pittsburgh,¹ in Bedford², Wyoming³, Carbon⁴ and Monroe⁵ counties, at Cresson Springs⁶ and Loretto Springs,⁷ in Cambria County, and at Ephrata Springs in Lancaster County.⁸

¹Sec. 9, Act of April 14, P. L. 570.

²Sec. 6, Act of April 3, 1852, P. L. 281.

³Sec. 6, Act of April 27, 468.

⁴Act of April 5, 1862, P. L. 276.

⁵Act of March 22, 1860, P. L. 229.

⁶Act of February 27, 1863, P. L. 77.

⁷Act of April 10, 1867, P. L. 1076.

⁸Act of March 22, 1860, P. L. 229.

All the above-mentioned acts are repealed or superseded by the Act of May 25, 1907, P. L. 244, the provisions of which will be found in the following sections.

§ 1177. **Rates of license tax.** No person, firm, limited partnership, or corporation shall keep, for purpose of profit, any shooting gallery, shuffle board room, billiard or pool room, bowling alley, nine or tenpin alley, or any alley or place on or in which any game is played with the use of balls and pins, or other objects, in this Commonwealth, without first taking out a license from the treasurer of the proper county. Every such person, firm, limited partnership, or corporation shall pay, each year, the sum of twenty dollars for the first shooting gallery, shuffle board, billiard or pool table, or bowling alley, nine or tenpin or other alley, or other game played with the use of balls or pins, or other objects; and ten dollars for each additional table, alley, or game played with the use of balls or pins, or other objects; to be collected by suit at law: Provided, that licenses shall be granted to persons or corporations maintaining summer resorts, for such part of the year as such summer resorts may be maintained, and for which a license fee of twenty-five dollars shall be charged for the season; such rate covering all fees on shooting galleries, shuffle boards, billiard and pool tables, and bowling alleys maintained in connection with such summer resort: Provided, that this section shall not be construed to tax shooting galleries, shuffle boards, billiard tables, pool tables, nine or tenpin, or other alleys, connected with hospitals, asylums or other institutions for the relief of the insane and diseased.⁹

It seems that a tavern keeper is subject to the payment of tax who maintains a billiard table for the direct use of which he makes no charge, but indirectly derives a profit from the sale of cigars and drinks to players.¹⁰

§ 1178. **Definition of "billiard room," etc.** "Billiard room," as used in this act, means any room in which any game is played upon any table, with balls and cue, whether such game be known as billiards, pool, Manhattan pool, or by any other name or designation. "Billiard table" means any table, whether pocket or carom, upon which the game of billiards, or what is now popularly known as pool, or Manhattan pool, is played.

⁹Sec. 1, Act of May 25, 1907, P. L. 244.

¹⁰Willems v. Com., 12 W. N. C. 471 (1883).

"Nine and tenpin alley" includes any place on or in which any game is played with the use of balls and pins, or other objects.¹¹

§ 1179. Mercantile appraisers to assess tax—Appeals from assessments. It shall be the duty of every mercantile appraiser, in each of the counties of the Commonwealth, to ascertain and assess each and every keeper of shooting galleries, shuffle board rooms, billiard rooms, pool rooms, bowling alleys, ninepin alleys, tenpin alleys, or any alley or place on or in which any game is played with the use of balls and pins, or other objects, in the manner provided by law for the assessment of mercantile license taxes; and his appraisalment shall be final and conclusive, unless appealed from within ten days to the county treasurer and mercantile appraiser, in all counties; except where there is a board of mercantile appraisers, in which case the board shall hear all appeals. Any person so appraised shall have a further right of appeal to the court of common pleas, within ten days from the decision of the county treasurer and mercantile appraiser, or board of mercantile appraisers, as in the case of mercantile licenses. Unless appealed from, as aforesaid, the said assessment shall be final and conclusive upon the said keeper in any civil suit brought for the recovery of said license fees. And in such suit fifty per centum shall be added to the said assessment and collected from each keeper, as a penalty for failure to pay the same. Each keeper shall pay, in addition to the said license tax, a fee of one dollar to the county treasurer, for each place of business kept by him. The mercantile appraiser shall be entitled to the same compensation as in the case of mercantile licenses, to be paid by the licensee.¹²

§ 1180. Mercantile appraiser to certify lists of persons assessed. It shall be the duty of every mercantile appraiser to certify to the county treasurer a correct list of all persons, firms, or corporations assessed in the county in which he is appointed, giving the names and business addresses of the keepers so returned, and the amount of license due by each. This list shall be kept by the county treasurer in collecting said license taxes. After appeals have been taken, and exonerations made, the correct list shall be certified by the county treasurer to the auditor general

¹¹Sec. 2, Act of May 25, 1907,
P. L. 244.

¹²Sec. 3, Act of May 25, 1907,
P. L. 244.

and state treasurer, on or before the first day of January in each and every year.¹³

§ 1181. **Collection of tax.** It shall be the duty of the county treasurer of the proper county to proceed to collect the amount due for said taxes, in the same manner as mercantile licenses are by law collected. The county treasurer shall, at the expiration of each month, forward the amount of license taxes received by him, including such penalties as aforesaid, to the state treasurer. The rate of commission allowed the county treasurer for his services in collecting the said license tax shall be the same as for collecting mercantile licenses, and the county treasurer shall be allowed a fee of one dollar, to be paid by the licensee, for issuing each license.¹⁴

§ 1182. **Other license taxes for state purposes abolished.** The license tax herein provided for shall be in lieu of all license taxes heretofore required by law to be paid, for the use of the Commonwealth, by said keepers.¹⁵

§ 1183. **Repeal of certain local acts.** Section six of the act, entitled "An act for the relief of Mary Lambrite, widow of a revolutionary soldier, relating to the poorhouse of Beaver county, and to licensing billiard rooms, et cetera, in Bradford county," approved the third day of April, Anno Domini one thousand eight hundred and fifty-two, which reads as follows:

"Section 6. That hereafter the license on each billiard room, bowling saloon, or nine or tenpin alley, in the county of Bedford, shall be at the rate of two dollars and fifty cents for every month the same may be in use."

Section one of the act, entitled "An act to extend the provisions of a certain act to Monroe and Lancaster counties," approved the twenty-second day of March, Anno Domini one thousand eight hundred and sixty, which reads as follows:

"Section 1. Be it enacted, etc., that the provisions of the sixth section of an act, entitled 'An act for the relief of Mary Lambrite, a widow of a revolutionary soldier, relating to a poorhouse in Beaver county, and to licensing billiard rooms, et cetera, in Bedford county,' approved April third, one thousand eight hundred and fifty-two, be and are hereby extended to Monroe

¹³Sec. 4, Act of May 25, 1907,
P. L. 244.

¹⁴Sec. 6, Act of May 25, 1907,
P. L. 244.

¹⁵Sec. 5, Act of May 25, 1907,
P. L. 244.

and Lancaster counties: Provided, that the provisions of said section shall only extend in Lancaster to Ephrata Mountain Springs."

Section one of the act, entitled "An act extending the provisions of an act relative to billiard rooms in Bedford county to Carbon county," approved the fifth day of April, Anno Domini one thousand eight hundred and sixty-two, which reads as follows:

"Section 1. Be it enacted, etc., that the provisions of the sixth section of an act, entitled 'An act for the relief of Mary Lambrite, widow of a revolutionary soldier, relating to the poorhouse of Beaver county, and to licensing billiard rooms, et cetera, in Bradford county, should be Bedford county, approved the third day of April, Anno Domini one thousand eight hundred and fifty-two, be and the same is hereby extended to the county of Carbon," and all acts or parts of acts inconsistent herewith are hereby repealed, except as to pending cases or licenses due thereunder.¹⁶

¹⁶Sec. 7, Act of May 25, 1907, P. L. 244.

CHAPTER LIV.

EATING HOUSE LICENSES.

§ 1184. **Eating house licenses.** From and after the passage of this act, each and every individual, firm, co-partnership or corporation engaged in carrying on a restaurant, eating house, cafe or quick lunch business shall pay an annual mercantile license tax of two dollars, and shall pay one mill additional on each dollar of the whole volume, gross, of the business transacted annually.¹

The enforcement of the provisions of this act shall be under and in accordance with the laws of this Commonwealth, now in force, relating to the levy and collection of mercantile license and tax.²

The license tax on eating houses was first imposed by § 20 of the Act of April 10, 1849, P. L. 574, which is as follows:

No person shall hereafter keep any beer house, eating house, restaurant or oyster cellar, other than hotels now authorized by law to be licensed and kept, wherein beer, ale or other malt liquors, or oysters, or other refreshments of any kind whatsoever are dressed, prepared or sold, without first applying for and obtaining a license from the county treasurer of the proper city or county, and for which the keepers thereof shall pay respectively the sum hereinafter provided.

So much of the Act of 1849 as related to restaurants and cafes selling malt liquors was repealed by the Acts of May 13 and May 24, 1887.³ It was held, however, that it still applied to eating houses not dealing in malt liquors, and that it was not repealed by the Act of May 2, 1899.⁴

¹Sec. 1, Act of April 25, 1907, P. L. 117.

²Sec. 2, Act of April 25, 1907, P. L. 117.

³See *Com. v. Iron City Brewing Co.*, 146 Pa. 642 (1892); *Mc-*

Clure v. Krumbholz & Riley, 9 D. R. 544 (1900).

⁴*Com. v. Givin*, 21 Pa. Super. Ct. 401 (1902); *Child's Dining Hall Co.*, 32 Pa. Super. Ct. 467 (1907).

The Act of April 25, 1907, did not become operative until the mercantile assessments were made for 1908.⁵

While the Act of April 10, 1849, *supra*, was in force, it was held that a hotel keeper, paying a liquor license under the provisions of the Act of May 13, 1887, P. L. 108, and its supplements, was not subject to the payment of a further tax for keeping an eating house, whether his hotel was conducted upon the European plan or not.⁶ It is presumed that the law is the same under the Act of 1907. Whether a restaurant keeper who has a liquor license, and who does not furnish lodgings to customers, is subject to the payment of a further license fee as the keeper of an eating house, does not appear to have been decided under the provisions of either act.

⁵Mercantile Taxes, 33 Pa. C. C. 579 (1907).

⁶McClure v. Krumbholz & Riley, 9 D. R. 544 (1900).

CHAPTER LV.

PEDDLERS' LICENSES.

- § 1185. Peddlers defined.
1186. Peddlers' licenses imposed under police power.
1187. Ordinances discriminating against persons in a class invalid.
1188. Exemption of farmers and others selling their own produce.
1189. Different license fees may be exacted from peddlers of different commodities.
1190. Peddlers to be licensed—Amount of license fees.
1191. Only persons incapacitated from procuring a livelihood by labor to be licensed—Wholesale peddlers.
1192. Penalty.
1193. Payment by county treasurers of moneys received from peddlers' licenses.
1194. Peddling in Philadelphia, with or without license, forbidden to all except citizens selling their own produce.
1195. Peddlers not to sell at public auction or outcry—Citizens of Pennsylvania may sell goods, wares and merchandise manufactured by them, without a license.
1196. Manufacturers of certain articles may peddle same.
1197. Tin and clock peddlers.
1198. How licenses shall be issued.

§ 1185. **Peddlers defined.** A hawker and peddler is an itinerant or traveling trader who carries goods about for the purpose of selling them, and who does sell them, in contradistinction to traders who have goods for sale and sell them at a fixed place of business.¹

One who travels throughout the county, as an employee of a store kept therein, soliciting orders and afterwards delivering goods to the persons ordering the same, is not a peddler,² nor is one who has a fixed place of business, either within³ or without the state; and solicits and takes orders within the state, delivering the goods afterwards.⁴

¹New Castle v. Cutler, 15 Pa. Super. Ct. 612 (1901).

²Com. v. Eichenberg, 140 Pa. 158 (1891).

³Com. v. Horn, 12 Pa. C. C. 284 (1892); 2 D. R. 176.

⁴Com. v. Hance, 24 Pa. C. C. 431 (1901); Easton City v. Easton Beef Co., 5 Pa. C. C. 68 (1888).

In judging whether a person is a peddler, all the surrounding circumstances should be taken into consideration. A single or occasional sale would not seem to constitute a person a peddler. There should be a system of sales indicating that the person is engaged in the business of hawking and peddling.⁵

It is not a violation of the local law relative to peddlers in Columbia and other counties for an unlicensed person to travel from farm to farm exchanging goods and merchandise for farm produce.⁶

§ 1186. Peddlers' licenses imposed under police power. Peddlers' licenses are imposed under the police power.⁷

The business of peddling is a proper subject for police regulation and is within the scope of municipal control.⁸

§ 1187. Ordinances discriminating against persons in a class invalid. Ordinances regulating the business of peddling must be directed against the business or practice of peddling, and not against some of the persons who may be engaged in it. A statute or ordinance which discriminates against persons engaged in the same trade or pursuit is not a police but a trade regulation, and therefore invalid. Hence an ordinance of a borough prohibiting persons from peddling without a borough license, and fixing the price of such license at a prohibitive figure, but exempting all inhabitants of the borough from the operation of the ordinance, is invalid,⁹ and a borough ordinance requiring peddlers of various commodities to be licensed, but exempting from its operation "persons selling by sample to manufacturers or to licensed merchants or to dealers residing or doing business in a borough" is void;¹⁰ and ordinances and statutes generally, imposing license taxes, which exempt from their operation residents of certain localities are invalid.¹¹

⁵Commonwealth v. Edson, 2 Pa. C. C. 377 (1884).

⁶Commonwealth v. Edson, 2 Pa. C. C. 377 (1884).

⁷Warren Borough v. Geer, 117 Pa. 207 (1887); North Wales Borough v. Brownback, 10 Pa. Super. Ct. 227 (1899); Brownback v. North Wales Borough, 194 Pa. 609 (1900); Titusville v. Brennan, 143 Pa. 642 (1891);

Mechanicsburg v. Koons, 18 Pa. Super. Ct. 131 (1901).

⁸Sayre Borough v. Phillips, 148 Pa. 482 (1892).

⁹Sayre Borough v. Phillips, 148 Pa. 482 (1892).

¹⁰Mechanicsburg v. Koons, 18 Pa. Super. Ct. 131 (1901).

¹¹Shamokin v. Flannigan, 156 Pa. 43 (1893); Conshohocken Borough v. Fennel, 5 Pa. C. C. 65

§ 1188. **Exemption of farmers and others selling their own produce.** It seems, however, that statutes and ordinances requiring the taking out of licenses, which exempt from their operation farmers and others selling their own produce, are valid.¹²

§ 1189. **Different license fees may be exacted from peddlers of different commodities.** Peddlers of different commodities may be required to pay different license fees. Thus, a higher license may be imposed on fish peddlers than upon tea peddlers.¹³

A license tax upon peddlers of milk is valid although peddlers of bread, fresh fish, etc., are expressly exempted from any tax,¹⁴ and so is an ordinance requiring peddlers of all merchandise whatsoever, except books, magazines and papers.¹⁵

§ 1190. **Peddlers to be licensed—Amount of license fees.** The courts of quarter sessions of the respective counties in this Commonwealth, or two judges of said courts, in vacation, are hereby authorized to issue a license to any applicant who shall bring himself within the provisions of the act passed 30th day of March, 1784, entitled "An act for regulating of hawkers and peddlers," and the supplement thereto, passed the 28th day of March, 1799, and who shall give bond to the Commonwealth of Pennsylvania, with sureties to be approved of by the court, in the sum of three hundred dollars, conditioned that such applicant shall be of good behavior during the continuance of

(1888); *Wilcox v. Knoxville Borough*, 12 Pa. C. C. 641 (1892); *Com. v. Walker*, 14 Pa. C. C. 586 (1894); *Irwin Borough v. Douglass*, 8 D. R. 505 (1899); *Port Clinton Borough v. Shafer*, 18 Pa. C. C. 67 (1897); *Com. v. Simons*, 15 Pa. C. C. 550 (1895); *Com. v. Snyder*, 182 Pa. 630 (1897); *Com. v. Brinton*, 132 Pa. 69 (1890); *Com. v. Harmel*, 166 Pa. 89 (1895); *Com. v. Dunham*, 191 Pa. 73 (1899); *Easton City v. Easton Beef Co.*, 5 Pa. C. C. 68 (1888); *Groh v. Com.*, 6 Pa. C. C. 130 (1888).

¹²*New Castle v. Cutler*, 15 Pa. Super. Ct. 625 (1901); *Com. v.*

Gardner, 133 Pa. 284 (1890); *South Easton Borough v. Moser*, 18 Pa. C. C. 343 (1896); *Mechanicsburg Borough v. Koons*, 18 Pa. Super. Ct. 131 (1901); *Irwin Borough v. Douglass*, 8 D. R. 505 (1899); *Lansford Boro. v. Wertman*, 18 Pa. C. C. 469 (1896). See however *Com. v. Simons*, 15 Pa. C. C. 550 (1894).

¹³*Mechanicsburg Borough v. Koons*, 18 Pa. Super. Ct. 131 (1901).

¹⁴*Danville Borough v. Weaver & Campbell*, 17 Pa. C. C. 17 (1896).

¹⁵*Irwin Borough v. Douglass*, 8 D. R. 505 (1899).

such license which shall be for one year; and the said applicant shall satisfy the court that he is a man of honesty and good moral character, and otherwise bring himself within the provisions of said acts: Provided, that before any such license shall issue to any such applicant, he shall pay for the use of this Commonwealth, for a license to travel on foot, eight dollars; with one horse and cart or wagon, or other vehicle, sixteen dollars; with two horses and wagon, or other vehicle, twenty-five dollars; and produce a receipt from the county treasurer, together with the usual fees to the clerk for similar services; and the clerks of said court respectively, shall, within ten days after each term, transmit to the auditor general a list of the names of persons to whom licenses have been granted at the preceding term, and the rates thereof: . . . And provided further, that it shall be the duty of the auditor general to publish once a year the names of all persons who shall take out a license as aforesaid, in at least three papers within this Commonwealth, for three successive weeks.¹⁶

§ 1191. Only persons incapacitated from procuring a livelihood by labor to be licensed—Wholesale peddlers. No person shall be licensed as hawker and peddler or petty chapman, within this state, but such only as is a citizen of the United States, and who from loss of limb or other bodily infirmity, shall be disabled from procuring a livelihood by labor, which disability shall be proven by certificate or certificates from two physicians of respectable character, under oath, residing in the county where the application for license is made. And no license hereafter granted shall extend farther than the county in which such license may have been granted, except wholesale peddlers, whose license shall extend throughout this state, for which they shall pay for the use of the Commonwealth, for a license to travel with one horse and wagon or other vehicle, forty dollars; with two horses and a wagon or other vehicle, fifty dollars.¹⁷

The first section of the Act of March 28, 1799, 3 Sm. L. 359, contained a similar provision that no person should be licensed as a peddler but such as from age, loss of limb or other bodily infirmity were disabled from procuring a livelihood.

¹⁶Sec. 1, Act of April 2, 1830, P. L. 147.

¹⁷Sec. 1, Act of April 16, 1840, P. L. 433.

No person shall be licensed as a hawker or peddler, under the several acts of assembly now in force, unless he shall have resided at least one year in the county in which such application shall be made, and shall produce satisfactory evidence, on oath, from at least two respectable practising physicians, who shall be citizens of the United [States], residents in such county, that such applicant is in point of fact, by reason of bodily disability; the nature and character of which shall be stated, unable to procure a livelihood at his trade, if he have any, or by bodily labor.¹⁸

So much of the different acts of assembly regulating peddling as makes physical disability of the applicant one of the tests, is unconstitutional as in contravention of Article 1, § 1, of the Constitution of Pennsylvania and the Fourteenth Amendment to the Constitution of the United States.¹⁹

§ 1192. Penalty. If any person not being licensed as aforesaid, except such whose licenses have or may not yet be expired, shall be found hawking, peddling or traveling from place to place through any part of this state to sell, or expose for sale, any foreign or domestic goods, wares or merchandise, every person so offending against this act shall be liable to a fine of fifty dollars; or being so qualified by the license, shall refuse on request of any citizen of this state to show his license, every person so offending shall be liable to a fine of twenty dollars to be recovered and applied in the same manner as is provided for by the act for regulating hawkers and peddlers and its several supplements, passed the thirtieth day of March, one thousand seven hundred and eighty-four: Provided, that this act shall not be construed to prevent citizens of this Commonwealth from hawking and peddling goods of their own manufacture, by themselves or through their authorized agents.²⁰

The Act of 1889, amending the Act of 1840, which provided a penalty for hawking or peddling to be recovered as provided by the Act of March 30, 1784, and its several supplements, continues in force the remedy by debt for recovery of the penalty, as pro-

¹⁸Sec. 7, Act of May 5, 1841, P. L. 344.

¹⁹Sec. 1, Act of May 9, 1889, P. L. 150, amending § 2, Act of

²⁰Brittain's Application, 5 Pa. C. C. 318 (1888); 22 W. N. C. 35.

April 16, 1840, P. L. 433.

vided by Act of April 2, 1830, said Act of 1830 being a supplement to the Act of 1784. An indictment for peddling without a license will not, therefore, lie under the Act of 1889.²¹

§ 1193. Payment by county treasurers of moneys received from peddlers' licenses. It shall be the duty of the county treasurers respectively, on or before the second Tuesday in December in each and every year, to render an account, under oath or affirmation, to the auditor general, of all moneys received by them for licenses, specifying the names of the persons and the amount received from each, and pay over to the state treasurer all moneys received by them, deducting therefrom a commission of five per cent; and if any county treasurer shall neglect or refuse to render his account to the auditor general for settlement, and pay over the full amount to the state treasurer, as hereinbefore directed, such treasurer shall not be allowed any compensation or commission.²²

§ 1194. Peddling in Philadelphia, with or without license, forbidden to all except citizens selling their own produce. . . . Provided, that no person licensed for the purpose aforesaid shall be permitted to sell, vend or expose to sale any foreign or domestic goods, wares or merchandise, in any private or public house, or in any of the open streets, lanes or alleys, or in any other part or place of the city of Philadelphia, the district of Southwark, or the townships of the Northern Liberties, Moyamensing and Passayunk, under the penalty of fifty dollars, to be recovered by any person who shall sue for the same, as debts of like amount are by law recoverable: . . .²³

Under the Act of April 2, 1830, P. L. 147, based upon the Acts of March 30, 1784, 2 Sm. L. 99, and March 28, 1799, 3 Sm. L. 359, the hawking or peddling of goods, wares or merchandise in Philadelphia, with or without a license is prohibited, saving to citizens the right to sell goods, etc., of their own growth, produce or manufacture.²⁴

²¹Com. v. Stiles, 7 Pa. C. C. 665 (1890); Com. v. Winslow, 7 Pa. C. C. 667 (1890).

²²Sec. 3, Act of April 2, 1830, P. L. 148.

²³Sec. 1, Act of April 2, 1830, P. L. 147

²⁴Com. v. Brinton, 132 Pa. 69 (1890); 25 W. N. C. 277; Com. v. Winslow, 7 Pa. C. C. 667 (1890).

The said statutes are constitutional, being a proper exercise of the police power.²⁵

§ 1195. Peddlers not to sell at public auction or outcry—Citizens of Pennsylvania may sell goods, wares and merchandise manufactured by them without license. No person or persons, either with or without license, shall sell or expose to sale any foreign or domestic goods, wares or merchandise, as a hawker or peddler or traveling merchant by public auction or outcry, in any part of this Commonwealth under a penalty of fifty dollars for each and every offense; and all forfeitures that may accrue under this act, or the acts to which this is a further supplement, may be sued for and recovered by action of debt, before any alderman or justice of the peace, as debts of like amount are by law recoverable, by any person who may sue for the same, one half to the informer and the other half to the use of the county in which the offense may have been committed; and so much of the act to which this is a further supplement as is by this act altered or supplied is hereby repealed: Provided, nevertheless, that nothing contained in this act shall prohibit the citizens of this Commonwealth, who may manufacture goods, wares or merchandise, within this Commonwealth, from vending or exposing the same to sale in the same manner as if said act had not been passed into a law.²⁶

A jeweler who assembles parts of watches, puts them together and peddles them from place to place is not a manufacturer within the meaning of the proviso to the foregoing act.²⁷

The burden of proof is upon a peddler to show the special circumstances which give him the right to peddle.²⁸

The foregoing act applies as well to a hawker or peddler who sells under a soldier's license, as to an ordinary peddler; neither may sell at auction.²⁹

§ 1196. Manufacturers of certain articles may peddle same. It shall be lawful for the manufacturers of agricultural tools and implements, stoves, hollow-ware and wooden-ware, to

²⁵Com. v. Brinton, 132 Pa. 69 (1890); ²⁵W. N. C. 277; Com. v. Percival, 11 Pa. Super. Ct. 608 (1899).

²⁶Sec. 2, Act of April 2, 1830, P. L. 148.

²⁷Com. v. Percival, 11 Pa. Super. Ct. 608 (1899).

²⁸Com. v. Percival, 11 Pa. Super. Ct. 608 (1899).

²⁹Com. v. Rosencrans, 9 Pa. C. C. 399 (1891).

peddle their own manufacture, or authorize agents to peddle the same for them: Provided, that the provisions of this act shall not extend to any portion of the state east of the Allegheny mountains, or to the county of Armstrong.⁸⁰

§ 1197. Tin and clock peddlers. No person shall employ himself or be concerned in the business or employment of hawking or peddling any kind of tin or japanned ware or clocks, from place to place, without having previously obtained a license so to do, under the provisions of the second section of this act; and if any person shall go from place to place to sell or expose to sale any such articles, without a license so to do being by him first obtained, such person shall forfeit and pay the sum of fifty dollars; and any justice of the peace or alderman, on view, or the information or complaint, on oath or affirmation, of any other person, shall and in either case is hereby enjoined to proceed in a summary way against any such person so offending to conviction; and in default of immediate payment of said forfeiture, to commit him to the common jail of said county, there to be detained until discharged by due course of law; and every repetition of the said offense, shall be considered and punished as a new offense; and every person so employed, who upon demand shall refuse to exhibit his license, shall be deemed an offender against this act; one-half of the penalties which may accrue under the provisions of this act, shall go to the informer, and the other half to the county in which they may happen; and any such informer, notwithstanding his interest, shall be a competent witness.⁸¹

§ 1198. How license shall be issued. The clerks of the court of quarter sessions of the respective counties of this Commonwealth, are hereby authorized to grant separate licenses for one year, under seal of said court, to hawkers and peddlers of tin and japanned ware, and to hawkers and peddlers of clocks, upon satisfactory evidence of the good moral character of such applicant, he having first produced a receipt from the county treasurer for thirty dollars; and it shall be the duty of the said clerks respectively, upon granting such license, immediately to transmit a certificate therefor to the auditor general, who shall

⁸⁰Sec. 1, Act of April 14, 1863,
P. L. 431.

⁸¹Sec. 1, Act of Feb. 6, 1830, P.
L. 39.

charge the county treasurer with the sum so received; and the county treasurer shall receive a like commission and be subject to the same duties, restrictions and penalties, connected with their accountability under this act, as are provided in the fifth section of the act, entitled "An act laying a duty on retailers of foreign merchandise," and the applicant shall pay to the clerk like fees as for similar services.³²

³²Sec. 2, Act of Feb. 6, 1830, P. L. 39.

CHAPTER LVI.

TAX ON WRITS, WILLS, DEEDS, ETC.

§ 1199. Tax on writs.

1200. Tax on deeds and wills.

1201. Tax on commissions.

1202. Returns of prothonotaries and other officers to auditor general.

1203. Commission for collection of tax.

§ 1199. **Tax on writs.** The prothonotaries of the courts of common pleas and the prothonotary of the supreme court having original jurisdiction . . . in this Commonwealth, shall demand and receive on every original writ issued out of said courts (except the writ of habeas corpus) and on the entry of every amicable action, the sum of fifty cents; on every writ of certiorari to remove the proceedings of a justice or justices of the peace or aldermen, the sum of fifty cents; on every entry of a judgment by confession or otherwise, where proceedings has not been previously commenced, the sum of fifty cents, and on every transcript of a judgment of a justice of the peace or alderman, the sum of twenty-five cents.¹

The Act of April 6, 1830, imposing a state tax on original writs and other proceedings, is constitutional, and the prothonotary who pays such taxes may recover them by an action in assumpsit from the person for whom they were paid.²

The first section of the said Act of 1830 imposed a tax of three dollars and fifty cents on every writ of error or appeal issued by the prothonotary of the supreme court, but this tax was abolished by § 3 of the Act of May 19, 1897, P. L. 68.

§ 1200. **Tax on deeds and wills.** The several recorders of deeds shall demand and receive for every deed and for every mortgage or other instrument in writing offered to be recorded fifty cents.³

¹Sec. 3, Act of April 6, 1830, P. L. 272.

²Sec. 4, Act of April 5, 1830, P. L. 272.

³Cone v. Donaldson, 47 Pa. 363 (1864).

On the probate of any will and the granting of letters testamentary thereon, also on the granting of any letters of administration, every register shall demand and receive for the use of the Commonwealth in each case the sum of fifty cents.⁴

Where the oath and bond of an officer are printed upon one sheet of paper, but one tax of fifty cents should be collected for both bond and oath.⁵

Aldermen and justices of the peace are exempted from the payment of a tax for recording their commissions, oaths and bonds, by the Act of June 13, 1840, P. L. 689.⁶

The state tax and register's fees are both payable when a will is probated, and no further fee is collectible if letters testamentary are also issued. No state tax is collectible for recording a certified copy of a will probated in another county.⁷

The liability of a recorder for state taxes on instruments recorded by him does not necessarily depend upon whether or not such instruments are required by law to be recorded.⁸

The recording of sheriffs' deeds in the prothonotary's office does not subject them to the state tax of fifty cents, but only when offered and recorded in the office of the recorder of deeds.⁹

§ 1201. Tax on commissions. In lieu of the fees now receivable by the Secretary of the Commonwealth, for the use of the Commonwealth, there shall be demanded by and paid to the recorders of deeds within the city of Philadelphia and of the respective counties upon the several commissions hereafter named, at or before the delivery thereof, to the several officers commissioned, viz: on the commission of inspector of salt provisions; health officer, lazaretto physician and port physician, measurer of corn and salt, superintendent of the powder magazine, regulator of weights and measurers, the inspector of flour, inspector of ground black oak bark, butter and lard, gaugers of domestic distilled spirits, the sum of ten dollars; on the commissions of every prothonotary, a clerk of oyer and terminer, of quarter sessions, of orphans' court, mayor's court, register of

⁴Sec. 36, Act of March 15, 1832, P. L. 135.

⁵State Taxes Payable by Recorders, 16 D. R. 619 (1907).

⁶State Taxes Payable by Recorders, 16 D. R. 619 (1907).

⁷State Taxes Payable by Recorders, 16 D. R. 619 (1907).

⁸State Taxes Payable by Recorders, 16 D. R. 619 (1907).

⁹State Tax on Sheriffs' Deeds, 13 Pa. C. C. 473 (1893), op. Atty. Gen.

wills, recorders of deeds, notary public, interpreter of foreign languages, sheriff of a county, each ten dollars.¹⁰

The 11th section of the Act of April 5, 1842, P. L. 230, exempts coroners from the payment of a tax on their commissions.

§ 1202. Returns of prothonotaries and other officers to auditor general. The treasurer of the city of Philadelphia, and all county and city treasurers, every recorder of deeds, register of wills, prothonotary, clerk of the court of quarter sessions, and clerk of orphans' court in the Commonwealth, are hereby required to render the auditor general and state treasurer quarterly returns of all moneys received by them for the use of the Commonwealth, from (1) tax on original writs, (2) judgments, (3) amicable actions, (4) certiorari, (5) and transcripts from justices of the peace, as now provided by law, designating under proper heads the source from which the money was received; and all such moneys so collected shall be paid into the state treasury quarterly, or oftener, if required by the state treasurer.¹¹

The quarterly returns provided for in the preceding section shall be rendered by the treasurer of Philadelphia, and all county and city treasurers, and all other county officers named therein, on the first Monday of July next, and quarterly thereafter.¹²

Any officer who shall refuse or neglect to make the returns and pay over the amount due the Commonwealth within thirty days, as required by the preceding section of this act, shall forfeit his fees and commissions on the whole amount of money collected during the quarter; and in case the return is not made within thirty days after such return is due, and the money due the Commonwealth paid into the state treasury, a penalty of ten per cent. shall be added to the amount of tax found due.¹³

The state treasurer and auditor general (or any agent appointed by either of them) are hereby authorized to examine the accounts of any county officer who shall refuse to make the returns within the time specified as required by the third section of this act, and upon the report of such agent shall proceed to settle an account

¹⁰Sec. 6, Act of April 6, 1830, P. L. 272. It is to be regretted that there is no longer such an officer as "inspector of ground black oak bark, butter and lard!"

¹¹Sec. 1, Act of May 14, 1874, P. L. 175.

¹²Sec. 2, Act of May 14, 1874, P. L. 175.

¹³Sec. 3, Act of May 14, 1874, P. L. 175.

against such officer in the same manner that accounts are now settled against county officers: Provided, that if the amount of said account is not paid into the treasury within fifteen days from date of settlement, then said account shall be placed in the hands of the attorney general for collection, and shall bear interest from fifteen days after date of settlement, at the rate of twelve per centum per annum; and provided further, that to every such account settled, fifty per cent. on the amount due the Commonwealth shall be added, to include any losses which might otherwise accrue to the Commonwealth from such neglect or refusal to furnish the returns and pay over the amount found due.¹⁴

The state treasurer may, if he deem it conducive to the public interest, proceed immediately against the sureties of any officer who shall neglect to render his returns and pay over the amount due the Commonwealth.¹⁵

The auditor appointed by the court, referred to in the previous chapter, ascertains the amounts received by the several county officers under the acts above given, and reports the same to the auditor general, thus furnishing a check on the returns made by the officers themselves.

§ 1203. Commissions for collection of tax. Under the provisions of § 7 of the Act of April 6, 1830, P. L. 272, the prothonotaries of the several courts and the registers and recorders, on paying the tax into the state treasury, deduct for their own use three per centum of the amount thereof for receiving and paying the same.

¹⁴Sec. 4, Act of May 14, 1874, P. L. 175.

¹⁵Sec. 5, Act of May 14, 1874, P. L. 175.

CHAPTER LVII.

OBSOLETE TAXES.

- § 1204. Tax on bicycles.
- 1205. Direct inheritance tax.
- 1206. Excise tax on gross receipts of express companies.
- 1207. Tax on employers of foreign-born, unnaturalized males.
- 1208. Tonnage tax.
- 1209. Enrollment tax.
- 1210. Tax on boom companies rafting logs.
- 1211. License tax on stevedores in Philadelphia.
- 1212. Tax on store orders not payable in cash.
- 1213. State tax on gross receipts of brokers.
- 1214. Excess of fees of public officers.

§ 1204. **Tax on bicycles.** The Act of April 11, 1899, P. L. 36, provided for the appointment of boards of side path commissioners in the several counties, on the petition of a certain number of bicyclists, whose duty was to construct and maintain bicycle side paths, with funds raised by the taxation of bicycles at not more than one dollar per bicycle annually. This tax was held unconstitutional as repugnant to § 20 of Article III of the Constitution.¹

§ 1205. **Direct inheritance tax.** The Act of May 12, 1897, P. L. 56, imposed a tax of two dollars on every hundred dollars of the clear value of all personal property passing by will or by the intestate laws of the state to any person or persons, or body politic or corporate. This tax was held unconstitutional.²

§ 1206. **Excise tax on gross receipts of express companies.** The Act of July 15, 1897, P. L. 294, imposed a tax on the gross receipts of express companies, in addition to the tax

¹Com. v. Dauphin County Com'rs, 23 Pa. C. 646 (1909);
9 D. R. 350; Keeler et al. v. Westgate et al., 10 D. R. 240 (1901).

²Cope's Estate, 191 Pa. 1 (1899); Portuondo's Estate, 191 Pa. 28 (1899).

on gross receipts paid by such companies in common with other transportation companies. This tax was abolished by Act of April 29, 1899, § 2, P. L. 72.

§ 1207. **Tax on employers of foreign-born, unnaturalized males.** The Act of June 15, 1897, P. L. 166, imposed a tax on employers of foreign-born, unnaturalized male persons over twenty-one years of age. This tax was held unconstitutional as contrary to the requirements of the 14th amendment to the constitution of the United States.³

§ 1208. **Tonnage tax.** A description of the state tax system of Pennsylvania would be incomplete without a reference to the now obsolete tax on tonnage. The Act of April 10, 1864, P. L. 218, provided as follows:

"That in addition to the taxes now imposed by law, every railroad, steamboat, canal, slack-water navigation, or other transportation company doing business in this Commonwealth, shall make quarterly returns to the auditor general, commencing upon the first day of July, said returns to be made within thirty days after the termination of each quarter, under oath, stating specifically the entire number of tons of freight traffic carried or moved by such company or corporation during the three months ending on the first day of that month, and said corporations shall pay for the use of the Commonwealth the following taxes: Upon all tonnage carried upon or over their respective lines to be graduated as follows: First, upon products of mines, for each ton of two thousand pounds, two cents; second, upon the products of the forest, or animal or vegetable food, and all other agricultural products, three cents; third, upon merchandise, manufactures, and other articles, five cents. In all cases where the same freight is transported over different or continuous lines of transportation, then the tax hereby imposed shall be paid by the corporations carrying the same in proportion to the distances carried, as may be adjusted among themselves, the state treasurer being required to collect the whole of the said tax from either of the companies carrying the freight, as he may select: Provided, that freight shipped through and over one or several lines of transportation shall be chargeable with but one tax as aforesaid."

This act was amended by Act of August 25, 1864, P. L. 988,

³Juniata Limetone Co., Lim. v. Fagley et al., 187 Pa. 193 (1898).

and the tax was continued by Act of May 1, 1868, P. L. 108, being finally abolished by Act of April 24, 1874, P. L. 68, which also abolished the tax on gross receipts, afterward restored by the Act of 1877.

The Act of 1874 substituted for the tonnage tax, above described, a tax on the number of tons of coal mined or purchased by companies engaged in the mining or purchasing and selling of coal, at the rate of three cents per ton. This latter tax, under the provisions of § 9 of the act of June 7, 1879, P. L. 112, ceased and determined on and after July 1, 1881.⁴

This tonnage tax should not be confounded with the commutation of tonnage tax, which was a gross sum formerly paid annually by the Pennsylvania Railroad Co., in lieu of a tax or charge formerly imposed upon railroads competing with the railroads owned by the state.⁵

§ 1209. Enrollment tax. The Acts of April 16, 1845, P. L. 532, and May 1, 1868, P. L. 106, provided that no private act should be enrolled, or have the force or effect of law, until the party requiring the same should have paid into the state treasury a certain sum therein named, the amount thereof depending upon the nature of the act, and (if a law authorizing the incorporation of a company) upon the nature of the corporation to be formed and the amount of capital stock which said company was authorized to have. Supplements to the said Act of 1868 are the Acts of April 17, 1869, P. L. 69; April 14, 1870, P. L. 75; May 3, 1871, P. L. 249, and April 3, 1872, P. L. 39.

The state constitution of 1874 prohibits the enactment by the General Assembly of all such private acts as were subject to the payment of the enrollment tax, under the acts above referred

⁴The tax imposed by the seventh section of the Act of April 24, 1874, was a franchise tax, measured by the business of a company, to wit: by the number of tons of coal mined or purchased and sold, and not upon the coal itself. The tax was constitutional. *Kittanning Coal Co. v. Com.*, 79 Pa. 103; *Com. v. Phila. & R. R. Co.*, 62 Pa.

286 (1869); *Com. v. Erie Ry. Co.*, 1 Pears. 345 (1864); *Com. v. D. L. & W. R. R. Co.*, 1 Pears. 356 (1866). The tax was held unconstitutional so far as it applied to interstate tonnage. *Phila. & R. R. Co. v. Penna.*, 15 Wall. 232.

⁵See *Penna. R. R. Co. v. Com.*, 3 Grant 128 (1860).

to, so that while the tax has never been abolished by law, it is in a condition of "innocuous desuetude."

§ 1210. **Tax on boom companies rafting logs.** The Act of April 6, 1870, P. L. 52, imposed a tax for state purposes upon boom companies at the rate of one hundred dollars for each hundred thousand logs rafted by them. This tax was in addition to the tax on the capital stock of said companies.⁶ The tax was abolished by the 36th. section of the Act of June 1, 1889, P. L. 420.

§ 1211. **License tax on stevedores in Philadelphia.** The Acts of April 6, 1870, P. L. 958, and May 27, 1871, P. L. 1255, required persons engaged in the business of stevedoring in Philadelphia to take out an annual license, for which they should pay two hundred dollars to the state. The said acts required them to give a bond in the sum of fifteen thousand dollars as security for payment of wages to their employees, etc. These acts have never been enforced, probably because the punitive provisions thereof are not sufficient to compel their enforcement.

§ 1212. **Tax on store orders not payable in cash.** The Act of June 24, 1901, P. L. 596, imposed a tax on all persons or corporations issuing orders to their employees for wages, not redeemable in cash, of twenty-five per cent. of the face value of such orders. This act was crudely drawn, and, after numerous decisions of the courts, holding various kinds of orders not to come within its intent and purpose,⁷ all attempts to collect the tax were discontinued.

§ 1213. **State tax on gross receipts of brokers.** This tax is repealed. See § 1167, *supra*.

§ 1214. **Excess of fees of public officers.** The Act of March 10, 1810, P. L. 79, provided that the prothonotaries or clerks of the Supreme Court and of all inferior courts, the registers of wills, and the recorders of deeds should pay into the state treasury fifty per centum of the amount by which their receipts from fees, respectively, should exceed fifteen hundred dollars per year each.

This act was superseded by § 8 of the Act of April 2, 1868,

⁶*Susquehanna Boom Co. v. v. Buffalo & S. R. R. Co.*, 5 *Dau. Com.*, 14 *W. N. C.* 65 (1884). *Co. Rep.* 10 (1892); and numer-

⁷*Com. v. Bethlehem Steel Co.*, 5 *Dau. Co. Rep.* 1 (1892); *Com. 2 Dau. Co. Rep.*

P. L. 11, which provided that said officers should pay fifty per centum upon the amount of any excess over two thousand dollars of fees received by them, and that if two or more offices were held by one person, the auditor general should add together the fees received for the offices so held, and charge the same percentage on the aggregate amount of fees received by such persons holding more than one of said offices. Said act also permits the deduction from the gross amount of fees of office expenses and clerk hire. The Act of 1868 did not apply to the counties of Allegheny, Lancaster, Montgomery, Philadelphia, Beaver and Washington.

The Acts of April 6, 1871, P. L. 476, and March 6, 1892, P. L. 208, provided that the officers of Allegheny county should receive salaries as fixed therein, and that all fees received by them should be paid to the use of the county. Under this act it was held that no part of the receipts derived by the county from the fees of its officers was due to the Commonwealth.^a

The Act of May 6, 1874, P. L. 125, made the same provision for the payment of excess of fees by the same officers in counties of less than 150,000 inhabitants, which had been provided generally in the Act of April 2, 1868, thus applying to such of the counties excepted from the Act of 1868 as had less than 150,000 inhabitants.

The Act of March 31, 1876, provided that in all counties containing over 150,000 inhabitants all fees of officers should belong to the counties in and for which such officers were severally elected.

Under the provisions of this act it was held that no part of the receipts of officers in Philadelphia county was payable to the Commonwealth.

The Act of April 4, 1899, P. L. 31, repealed so much of the various acts as required the payment to the Commonwealth of any excess of fees received by the prothonotaries or clerks of the Supreme Court. The Act of May 11, 1901, P. L. 175, amended the eighth section of the Act of April 2, 1868, so as to provide that all excess of fees in the counties covered by said act should be paid to the county treasurers for the use of the respective counties.

This left the excess of receipts of officers in counties covered

^aCom. v. Allegheny County, 168 Pa. 303 (1895).

by the Act of May 6, 1874, P. L. 125, still payable to the Commonwealth, but by the Act of March 24, 1909, P. L. 77, the said Act of May 6, 1874, is amended so as to provide for the payment to the counties of the excess of fees of public officers of counties covered by said act.

Since the passage of the Act of March 24, 1909, therefore, no excess of fees of public officers is payable to the Commonwealth, but the tax is obsolete only as a state source of revenue, such excess of fees now being payable to the several counties.

CHAPTER LVIII.

FEDERAL TAX ON INCOMES OF CORPORATIONS.

- § 1215. What corporations are subject to the tax—Rate of tax.
- 1216. Ascertainment of net income.
- 1217. Deduction of five thousand dollars from amount of net income—Corporations to make returns to collectors of internal revenue—Contents of returns.
- 1218. Commissioner of internal revenue may require additional information and examine books and papers.
- 1219. Penalty for failure to make returns—Assessments to be made and tax paid when—Penalty for delayed payments.
- 1220. Assessments to be public records.
- 1221. Information obtained in discharge of duties not to be divulged by officers—Penalty.
- 1222. Penalty for making false returns.
- 1223. Regulations for collection of tax.

§ 1215. What corporations subject to tax—Rate of tax.
Every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any state or territory of the United States or under the Acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any state or territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from

business transacted and capital invested within the United States and its territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, however, that nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.¹

§ 1216. Ascertainment of net income. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the paid-up capital stock of such corporation, joint company or association, or insurance company, outstanding at the close of the year, and in the case of a

¹Par. 1, § 38 of the Act of Congress approved August 5, 1909, entitled "An Act to provide rev-

enue, equalize duties and encourage the industries of the United States, and for other purposes."

bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, that in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its territories, Alaska, or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof; (fifth) all amounts received

by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with state or territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.²

§ 1217. Deduction of \$5,000 from amount of net income—Corporations to make returns to collectors of internal revenue—Contents of returns. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the commissioner of internal revenue, with the approval of the secretary of the treasury, shall prescribe, setting forth; (first), the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second), the total amount of the bonded and other indebtedness of such cor-

²Par. 2, § 38, of the Act of Congress approved August 5, 1909, entitled "An Act to provide rev-

enue, equalize duties, encourage the industries of the United States and for other purposes."

poration, joint stock company or association, or insurance company at the close of the year; (third), the gross amount of the income of such corporation, joint stock company or association, or insurance company, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth), the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company, within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its territories, Alaska, and the District of Columbia; (fifth), the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth), the amount of interest actually paid

within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh), the amount paid by it within the year for taxes imposed under the authority of the United States or any state or territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth), the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the commissioner of internal revenue.³

§ 1218. Commissioner of internal revenue may require additional information and examine books and papers. Whenever evidence shall be produced before the commissioner of internal revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the commissioner of internal revenue that any corporation, joint stock company or association, or insurance company, has failed to make a return as required by law, the commissioner of internal revenue may require from the corporation, joint stock company

³Par. 3 of the Act of Congress equalize duties and encourage the industries of the United States, and for other purposes." approved August 5, 1909, entitled

or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the commissioner of internal revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the commissioner of internal revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so required the commissioner of internal revenue may amend any return or make a return where none has been made. All proceedings taken by the commissioner of internal revenue under the provisions of this section shall be subject to the approval of the secretary of the treasury.⁴

§ 1219. Penalty for failure to make returns—Assessments to be made and tax paid when—Penalty for delayed payments. All returns shall be retained by the commissioner of internal revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary,

⁴Par. 4, of the Act of Congress approved August 5, 1909, entitled "An Act to provide reve-

nue, equalize duties and encourage the industries of the United States, and for other purposes."

not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the commissioner of internal revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the commissioner of internal revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.⁵

§ 1220. Assessments to be public records. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the commissioner of internal revenue and shall constitute public records and be open to inspection of such.⁶

§ 1221. Information obtained in discharge of duties not to be divulged by officers—Penalty. It shall be unlawful

⁵Par. 5 of the Act of Congress approved August 5, 1909, entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes."

⁶Par. 6 of the Act of Congress approved August 5, 1909, entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States and for other purposes."

for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.⁷

§ 1222. Penalty for making false returns. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.⁸

⁷Par. 7 of the Act of Congress approved August 5, 1909, entitled "An Act to provide revenue, equalize duties and to encourage

the industries of the United States and for other purposes."

⁸Par. 8 of the Act of Congress approved August 5, 1909, entitled

§ 1223. Regulations for collection of tax. Regulations for the collection of the tax have not been promulgated as this work goes to press, but when they are, they may be obtained from the collectors of internal revenue.

"An Act to provide revenue, the industries of the United equalize duties and to encourage States and for other purposes."

APPENDIX.

FORMS.

§ 1224. Forms of returns of taxables.

1224a. Collector's warrant.

1225. Treasurer's deed for lands sold at tax sales.

1226. Surplus bond.

1227. Treasurer's deed for lands purchased by county commissioners.

1228. Commissioners' deed poll on redemption of lands purchased by them at tax sale.

1228a. Commissioners' deed for lands purchased by them at tax sales and sold by them.

1229. Appeal from settlements for state taxes to the court of common pleas of Dauphin County.

1230. Form of bond to accompany appeal.

§ 1224. **Forms of returns of taxables.** Blanks for the various returns which taxables are required to make to state and county officers for the purpose of taxation are furnished to the taxables by said officers, respectively, so that no useful purpose would be subserved by presenting these forms in this work. In case such forms are not received by taxables at the proper time, they will be supplied upon application to the officers to whom the reports are to be made, respectively.

§ 1224a. Collector's warrant.

.....County, }
..... } ss.

To....., Collector of
.....

These are to authorize and require you to demand and receive of and from every person named in the annexed duplicate of.....Taxes of said
.....the sum wherewith such person stands charged. And it shall be your duty to give public notice, as soon as convenient, by at least ten written or printed notices to be posted in as many public places in different parts of the
.....that said duplicate has been issued

and delivered to you; and all persons who shall within.....
days from the date of said notice make pay-
 ment of any taxes charged against them in said duplicate, shall
 be entitled to a reduction of.....per
 centum from the amount thereof; and all persons who shall fail
 to make payment of any taxes charged against them in said
 duplicate for.....months after notice
 given as aforesaid, shall be charged five per cent. additional on
 the taxes charged against them, which shall be added thereto
 and collected by you and paid to.....
, Treasurer of said....., or his suc-
 cessor in office, on or before the.....day of
19...., at which time abatement will
 be made for indigent persons, unseated lands, errors, &c., and
 on or before the.....day of.....
19...., you will pay into the hands of said Treasurer
 the whole amount of taxes charged and assessed in the an-
 nexed duplicate, without further delay, except amount of exon-
 erations and commissions allowed you by law. And if any per-
 son shall neglect or refuse to make payment of the amount due
 by him for such tax within thirty days from the time of de-
 mand so made, it shall be the duty of you, the Collector, afore-
 said, to levy such amount by distress and sale of goods and
 chattels of such delinquent, giving ten days public notice of such
 sale by written or printed advertisements, and returning the
 overplus (if any there be) to the owner. And in case goods and
 chattels sufficient to satisfy the same with the costs, cannot be
 found, you are hereby authorized to take the body of such de-
 linquent, and convey him to the jail of the proper County, there
 to remain until the amount of such tax, together with the costs,
 shall be paid or secured to be paid, or until he shall be otherwise
 discharged by due course of law. Provided, that nothing herein
 contained shall authorize the arrest or imprisonment for non-
 payment of any tax of any female or infant, or person found
 by inquest to be of unsound mind. Hereof fail not.

Given under my hand and seal at....., the
day of.....A. D. 19....
[SEAL]

Countersigned :

.....

§ 1225. Treasurer's deed for lands sold at tax sales.

Know All Men by These Presents,

That Whereas, by an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to amend the Act entitled 'An Act directing the mode of selling unseated lands for taxes, and for other purposes,'" enacted the thirteenth day of March, one thousand eight hundred and fifteen, I am commanded to commence on the second Monday in June in the year of our Lord one thousand nine hundred.....
and to adjourn from day to day, (if it be found necessary so to do,) and make public sale of the whole or any part of such tracts of unseated lands as lie in said County of.....
, as will pay the arrearages of the taxes, and part of which shall then have remained due and unpaid for the space of one year before, together with all costs necessarily accrued thereon by reason of such delinquency, and to make a deed or deeds in fee simple to the purchaser or purchasers of any unseated lands so sold, and the same in open Court of Common Pleas of the proper County duly to acknowledge, according to the directions of the Act to which the before mentioned Act is a supplement. In pursuance whereof, I, the said Treasurer, did, on the second Monday of June, in the year of our Lord one thousand nine hundred.....
commence the sale of the said unseated lands for arrearages of taxes, as directed by the said first recited Act, and did on the.....day of.....
A. D. 19....., for the taxes of 19....and 19...., offer for sale by public vendue or outcry, at the Court House in....., different quantities and parts of the following described unseated tracts of land, to-wit: A certain unseated tract of.....acres of land, situate, lying and being in the.....
 County of....., State of Pennsylvania, known and designated on the general map or draft of said County as.....containing..... assessed in the name of....., Warranteefor which there were no bidders; by reason whereof, I, the said Treasurer, did then and there offer and expose to sale, as aforesaid, the whole of the aforesaid described unseated tract of land, and sold the same to

.....for the sum of.....
dollars and.....cents, he being
 the highest bidder and that the best price bidden for the same.

Now Know Ye, that I, the said Treasurer, as well for and in
 consideration of the premises and of the sum of.....
dollars and.....cents, County, School,
 Building, Road.....

.....Taxes, being the arrears of taxes on the
 said land, and the sum of.....dollars costs
 necessarily accrued, to me in hand paid by the said.....

.....,at and before the ensealing and deliv-
 ery hereof, the receipt whereof I do hereby acknowledge, have
 granted and sold, by these presents, according to the direction
 of the said recited Acts, and by force and virtue thereof, do
 grant and sell the said.....heirs
 and assigns, *all* that said unseated.....sit-
 uate, lying and being in the.....County and State
 aforesaid, known and designated on the general map of.....

.....County as.....
 containing.....

Together with all and singular the rights, members and appur-
 tenances whatsoever thereunto belonging, or in anywise apper-
 taining; and the reversions and remainders, rents, issues and
 profits thereof: and also, all the estate, right, title, interest, prop-
 erty, claim and demand whatsoever of.....

.....
 the owner or holder of said described tract of land, of, in, to or
 out of the same: *To Have and to Hold* the said described un-
 seated.....hereditaments

and premises hereby granted or mentioned, or intended so to
 be, with the appurtenances unto the said.....

.....
 heirs and assigns, to the only proper use and behoof of the said
heirs and assigns, forever.

In Witness Whereof, I, the said Treasurer, have hereunto set
 my hand and affixed my seal, this.....day
 of.....in the year of our Lord one thousand
 nine hundred.....

Signed, Sealed and Delivered in Presence of

.....[SEAL]

.....

Entered for record in the recorder's office
of..... Tax, \$.....
County, the.....day of
.....19.... Fees, \$.....
.....
Recorder.

Commonwealth of Pennsylvania, }
County of..... } ss.

Recorded on this.....day of.....
A. D. 19....in the Recorder's office of said County, in Deed
Book.....Vol., Page.....

Given under my hand and the seal of the said office, the date
above written.
....., Recorder.

If the lands in question were seated the necessary changes
should be made in the above form and a clause like the following
should be inserted:

And whereas; personal property could not be found on said
premises sufficient to pay the said taxes assessed thereon and
the owner thereof having neglected or refused to pay the said
taxes, the collector of said.....returned the said
property to the commissioners of said county, as required by
law, and the owner of said property having refused or neglected
to pay the aforesaid taxes for the period of two years before the
second Monday of June, A. D.,.....and which thereupon
remained due and unpaid for the space of two years and up-
wards next preceding and before the said second Monday of
June,.....together with all costs necessarily accrued thereon.

Under the provisions of special acts of assembly applicable to
particular counties, the day of sale is in some cases fixed upon
a different date than the second Monday of June.

§ 1226. Surplus bond.

Know all Men by these Presents,

That
.....held and firmly bound unto
....., Treasurer of the County of
.....in the sum of

.....Dollars, lawful money of the United States as hereinafter mentioned, to which payment well and truly to be made,.....do bind.....heirs, executors and administrators, firmly by these presents. Sealed with.....seal and dated this.....day ofin the year of our Lord one thousand nine hundred and.....

Whereas the above bounden.....
.....
.....ha....
purchased.....of land,
situate in the.....of.....
County, Pennsylvania, assessed in the name of.....
.....and being.....
.....and containing
.....acres, at Treasurer's sales, for the taxes and costs due on said.....at the price of.....
..... Dollars:

Now the Condition of the above obligation is such, that if the said
.....heirs, executors, administrators and assigns shall well and truly pay, or cause to be paid to the owner or owners of the above described tract of land at the time of the sale of the same, or to his or their executors, administrators or assigns, the full sum of.....Dollars, (being the balance of the purchase money, after paying the tax and costs,) according to the force and form of the Acts of the General Assembly in such case made and provided, then this obligation to be void and of no effect, otherwise to be and remain in full force and virtue. And.....do hereby empower any attorney of any court of record in the Commonwealth of Pennsylvania, to appear for.....and confess judgment to the said.....,Treasurer, in trial and for use of the owner or owners aforesaid, with or without declaration filed, with interest from the time of the demand made of the sum of money, with a release of all errors and costs of suit.

Sealed and Delivered
in the Presence of

.....[SEAL]
.....[SEAL]
.....[SEAL]

.....
.....

County of....., State of....., ss.

On the.....day of.....Anno Domini 19....,
before me, the subscriber,.....
.....
personally came the above named.....
.....
.....
who in due form of law acknowledged the foregoing Bond to
be.....act and deed, and desired the same to be
recorded as such.

*Witness my hand and....., seal, the day and year
aforesaid.*

.....[SEAL]

**§ 1227. Treasurer's deed for lands purchased by
county commissioners. See § 294.**

**§ 1228. Commissioners' deed poll on redemption of
lands purchased by them at tax sale.**

Know All Men by These Presents.

That, whereas.....the owner of the land within
described, has paid to the county treasurer all the taxes and
costs due thereon at the time of the sale, and the taxes assessed
thereon from year to year after the sale, and interest on said
several amounts as required by law, and produced to us the
treasurer's receipt therefor; we.....
commissioners of the county of....., in com-
sideration of the same, and under and by virtue of the several
acts of assembly, authorizing the redemption of lands sold to
the county for taxes, have granted, bargained, sold, released and
confirmed, and by these presents do grant, bargain, sell release
and confirm unto the said..... and to his
heirs and assigns, all the right and title which the said county
may have acquired under the sale within mentioned, of, in and
to the within described tract of land.

To Have and to Hold the same, with the appurtenances unto
the said, and his heirs and assigns forever.

In Witness Whereof, we, the said commissioners, have here-

unto set our hands and seals, and the seal of said county, this
 day of, A. D.

Signed, sealed and delivered [SEAL]
 in presence of [SEAL]
 [SEAL]

Commonwealth of Pennsylvania }
 County of } ss.

Personally appeared before me,.....in and for
 said county,.....county commis-
 sioners of the county of, and acknowledged the
 foregoing indenture to be their act and deed, and desired that
 the same might be recorded as such.

Witness my hand andseal, thisday
 of.....A. D.

..... [SEAL]

**§ 1228a. Commissioners' deed for lands purchased by
 them at tax sales and sold by them.**

Whereas, a tract of land containing.....
acres, situate in.....
in the County of.....
 and State of Pennsylvania, surveyed upon warrant numbered

 was rated and assessed with divers taxes which remained un-
 paid, and the Treasurer of said County having given due and
 public notice of the time and place of sale, did on the.....
day of190..., expose the same
 to sale by public vendue or outcry, and no person bidding there-
 for a sum equal to the amount of taxes due and the cost of ad-
 vertising and sale, it therefore became the duty of the Commis-
 sioners of the County of.....to buy the same,
 which they accordingly did:

And Whereas, the Treasurer of said County, in pursuance
 thereof, by Deed bearing date the.....day of
190..., duly acknowledged, did grant and
 convey the said described tract of land to the Commissioners of
 the County of....., and their successors in
 office:

And Whereas, the said described tract of land not having been redeemed in due time by the original owners, the Commissioners of the County of....., in pursuance of the various Acts of Assembly in such case made and provided, did, after giving due and legal notice of the time and place of sale, expose the said described tract of land to public sale on the.....day of.....190..., and sold the same to.....
.....for the sum of
.....Dollars,
.....being the highest and best bidder and that the highest and best price bidden for the same.

Now Know Ye, that we.....
.....Commissioners of the County of.....and State of Pennsylvania, by virtue of the power and authority vested in us as aforesaid, for and in consideration of the sum of.....
.....Dollars,
lawful money of the United States of America, to us in hand paid, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained and sold unto the said.....
.....heirs and assigns,
all the right, title and interest of the said County of.....
....., of, in and to the hereinbefore mentioned and described tract of land known as.....

.....
together with all the privileges and appurtenances thereunto belonging, or in anywise appertaining. *To Have and to Hold* the said described tract of land, together with all the privileges and appurtenances thereunto belonging, or in anywise appertaining, unto the said.....
heirs and assigns, to the only proper use and behoof of the said
.....heirs and assigns forever.

In Witness Whereof, we have hereunto set our hands and the seal of the said County of....., this.....
.....day of.....190...

.....
.....
.....

County Commissioners.

Received on the day of the date of the foregoing Deed Poll,
the full consideration money therein mentioned.

.....,
Treasurer of.....County.

State of Pennsylvania, }
County of..... } ss.

Before me, the subscriber,.....
.....
personally came.....
.....
commissioners of the County of....., and duly
acknowledged the foregoing to be their act and deed for the
purposes therein mentioned, and desired that the same might be
recorded as such according to law.

Witness my hand and seal, this.....day of....
.....A. D. 19....
..... [SEAL]

DEED POLL.

.....
.....
.....

COMMISSIONERS OF

.....
COUNTY, PA.,
TO

.....
.....

Dated 19....

For

Consideration, \$.....

Recorded

.....
.....
.....
.....

Commonwealth of Pennsylvania, } ss.
County of.....

Recorded on this.....day of.....
A. D. 19...., in the Recorder's office of said County, in Deed
Book.....Vol....., Page.....

Given under my hand and the seal of the said office, the date
above written.

....., Recorder.

**§ 1229. Appeal from settlement for state taxes to the
court of common pleas of Dauphin county.**

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY.

Commonwealth of Pennsylvania

vs.

No.....Commonwealth Docket,

19.....

In the matter of the account for tax on capital stock for the
tax year ending, amounting to
(\$.....) dollars, settled and entered against the
.....Company by the Auditor General of Penn-
sylvania on the.....day of, 19....
and approved by the State Treasurer on theday
of.....19...., a copy of which settlement is hereto
attached.

TheCompany hereby appeals from the set-
tlement of the said account to the Court of Common Pleas of
Dauphin County and files the following specifications of objec-
tions thereto agreeably to the provisions of the Act of Assembly
in such case made and provided.

I. The said settlement is unjust, excessive and unlawful in
that tax is therein settled against the said company on fifty
thousand dollars of its capital stock, which is invested in real
estate situated in the state of Ohio, and therefore not subject to
taxation in Pennsylvania.

II. Said settlement is unjust, excessive and unlawful in that
tax is therein settled against the said company on fifty thousand
dollars of its capital stock, which is invested in the shares of stock
of corporations of the Commonwealth of Pennsylvania which
pay a capital stock tax to the state, etc., etc.

Where the objection to a settlement is that the act imposing

the tax is unconstitutional, the appeal should, of course, set out wherein it offends against the constitution of the state or of the United States.

Appeals are not sworn to, but are signed by the counsel of the corporation appealing.

§ 1230. Form of bond to accompany appeal.

Know All Men by these Presents,

That we, the.....Company
and
of the.....and State of.....
are held and firmly bound unto the Commonwealth of Pennsylv-
vania, in the sum of.....
..... Dollars
(\$.....), lawful money of the United States of Amer-
ica, to be paid to the said Commonwealth of Pennsylvania, or
her certain Attorney or assigns, to which payment well and
truly to be made we do bind ourselves, and each of us, our heirs,
executors, administrators, and successors, firmly by these
presents.

Sealed with our seals and the Corporate Seal of said Com-
pany, and dated the.....day of.....
....A. D. 190...

Whereas, the above bounden.....
.....Company has entered in the office
of the Auditor General of Pennsylvania an appeal to the Court
of Common Pleas of Dauphin County from the settlement of
an account for tax on.....amounting to
.....
..... Dollars
(\$.....), said account having been settled by the
Auditor General on the.....190... and ap-
proved by the State Treasurer on the.....190...

Now the Condition of this Obligation is such that if the said
.....Company shall
prosecute its said appeal with effect, and pay all costs or charges
which the court or arbitrators having jurisdiction to hear and
determine said appeal shall award, and also pay any sum of
money which shall appear by the judgment of the court or

award of arbitrators to be due upon said account to the Commonwealth of Pennsylvania, then this obligation to be void and of none effect, or otherwise to be and remain in full force and virtue.

..... Company.
Attest: by
 President.

Affix
 Corporate Seal
 Here

.....
 Secretary.
 [SEAL]
 [SEAL]

Signed, sealed and delivered in presence of

The security of the above bond is approved:
 [Must be signed by a Judge of some Court in the county
 where sureties reside.]

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*The decision of the lower court in this case was reversed by the Supreme Court on June 22, 1909, but the case above has not yet been reported. The writer anticipated the reporting of the case, first in 223 Pa. and afterwards in 224 Pa., and the case is erroneously cited to those reports in different places in the text.

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*The decision of the lower court in this case was reversed by the Supreme Court on June 22, 1909, but the case above has not yet been reported. The writer anticipated the reporting of the case, first in 223 Pa. and afterwards in 224 Pa., and the case is erroneously cited to those reports in different places in the text.

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